



WEST OXFORDSHIRE
DISTRICT COUNCIL

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Name and date of Committee	COUNCIL - 18 JANUARY 2023
Report Number	AGENDA ITEM NO.11
Subject	REPORT OF THE CONSTITUTION WORKING GROUP
Wards affected	ALL
Accountable member	Chair of Constitution Working Group: Ted Fenton Email: Ted.Fenton@westoxon.gov.uk
Accountable officer	Susan Sale, Interim Monitoring Officer Email: Susan.Sale@westoxon.gov.uk
Summary/Purpose	To consider proposals from the Constitution Working Group for amendments to the West Oxfordshire District Council Constitution to adopt a new Glossary, Summary & Explanation, Articles, Functions of Responsibility, Standards Sub-Committee Procedure Rules and Monitoring Officer Protocol.
Annexes	Annex A: Glossary Annex B: Summary & Explanation Annex C: Articles Annex D: Functions of Responsibility Annex E: Standards Sub-Committee Procedure Rules Annex F: Monitoring Officer Protocol
Recommendation/s	Council is recommended to resolve to: <ol style="list-style-type: none">1. Approve the Glossary at Annex A to this report and formally adopt it as part of the Council's Constitution from 19th January 2023;2. Approve the Summary & Explanation at Annex B to this report and formally adopt it as part of the Council's Constitution from 19th January 2023;3. Approve the Articles at Annex C to this report and formally adopt it as part of the Council's Constitution from 19th January 2023;4. Approve the Functions of Responsibility at Annex D to this report and formally adopt it as part of the Council's Constitution from 19th January 2023;5. Approve the Standards Sub-Committee Procedure Rules at Annex E to this report and formally adopt it as part of the Council's Constitution from 19th January 2023;6. Approve the Monitoring Officer Protocol at Annex F to this report and formally adopt it as part of the Council's Constitution from 19th January 2023;

	7. Note the amendments made to the Constitution under delegated authority by the Monitoring Officer as summarised at paragraph 2.7 of this report.
Corporate priorities	All
Key Decision	NO
Exempt	NO
Consultees/ Consultation	Constitution Working Group, Group Leaders, Chief Executive, Chief Financial Officer, Democratic Services Business Manager, Interim Monitoring Officer.

1. BACKGROUND

The current Interim Monitoring Officer has been tasked with undertaking a review of the Constitution and ensuring that it is clear, comprehensive, accurate, lawful and fit for purpose.

To that end, the Constitution Working Group, reconvened in 22/23 with fresh membership and revised terms of reference.

The Constitution Working Group recommended to Council in October 2022 revised Council Procedure Rules, Officer Employment Procedure Rules and a Protocol on Conferment of Honorary Titles. These amended parts of the Constitution were formally adopted by the Council and came into effect on 20th October 2022.

The Constitution Working Group has met several times since the October Council meeting and considered other parts of the current Constitution and makes recommendations to Council for the adoption of further amended parts, to be effective from 19th January 2023.

2. MAIN POINTS

2.1 GLOSSARY OF TERMS

The proposed amended Glossary of Terms is set out at Annex A to this report. The primary amendment is the use of the term 'Executive', rather than 'Cabinet', to reflect changes to legislation and in particular the *Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012*.

2.2 SUMMARY & EXPLANATION

Part I of the Constitution sets out the Summary and Explanation, and the proposed amended version can be found at Annex B to this report.

Part I has been amended to remove content which is better suited to the Articles of the Constitution and are included in Part 2. It also has been amended to include information about how the Council makes decision, clarify the public interest test when considering exempt information, the role of the Council's Audit & Governance Committee, the role of Council Officers and engagement by the Public.

2.3 ARTICLES

Part 2 of the Constitution comprises the Articles and proposed amendments have been made, set out as tracked changes, at Annex C to this report.

- Article 1 about the Council has been amended to reflect that the full Council is the policy making body who then delegates policy implementation and service delivery to the Executive. It clarifies that the election of the Leader of the Council, and the establishment and appointment to non-Executive Committees, is a role for full Council. It also clarifies that full Council will elect a Chair who shall not be a member of the Executive. It confirms that Local Choice functions are to be considered Executive. And makes provision for the holding of Special Council meetings in accordance with legislation.
- Article 2 concerns the Chair of the Council and clarifies that the Chair is elected by full Council, is the Civic Head who represents the Council, that they remain accountable to full Council, and may only be removed by the Council. The role includes attending and hosting such ceremonial and civic events as the Council determines is appropriate, and promoting charities of the Chair's choice, to be supported by external resources.
- Article 4 provides clarity around the Leader's term of office, particularly in relation to elections.
- Article 5 clarifies the Council's non-Executive Committees, and that full Council is responsible for appointing to such Committees, with each 'parent' Committee appointing to their Sub-Committee. This article also makes provisions for mandatory training for members dealing with 'quasi judicial' or regulatory matters.
- Article 8 reflects the increased threshold for a key decision of £150,000 being considered significant expenditure or savings.
- Article 12 clarifies the role and responsibility of officers, including the three statutory officers.
- Article 13 sets out how the public may engage with the democratic process.

2.4 RESPONSIBILITY FOR FUNCTIONS

The Interim Monitoring Officer proposed amendments to Part 3 of the Constitution, in particular around terms of reference of Council Committee's, to ensure clarity and transparency. Changes include more detailed information regarding the difference between Committees and Sub-Committees, the procedure and authority for making appointments to Committees and Sub-Committees including the body with the power to make appointments and information about political balance, and clarity around substitutions and training requirements for members of Committees and Sub-Committees.

Council should note that some amendments have been suggested to the Council's three Overview and Scrutiny Committees, but that a larger piece of work has been requested by the Executive to consider the structure of the Council's Overview and Scrutiny function. Proposals will therefore be considered by the Constitution Working Group in due course, including the option of the Council having one Overview and Scrutiny Committee with three Sub-Committees, which may prove to be more streamlined and agile, and reduce complexities around the current overlap of the remit of the three different committees which has led to a need for simultaneous meetings on some occasions. It is anticipated that

a further report around the Council's overview and scrutiny function will be brought to Council later in 2023.

The proposed amendments may be summarised as follows:

- Definition of Key Decisions: It is proposed that the value at which something is considered financially significant for the purposes of a key decision is increased to be expenditure or savings of £150,000 rather than £50,000;
- References to Cabinet are amended to be reference to the Executive, in line with legislation;
- To provide clarity around Council's ability to make appointments to Outside Bodies in respect of non-Executive functions and the Executive's authority to make such appointments in respect of Executive matters and to advise the Council of such appointments;
- Authority to consider arrangements for investigating allegations into code of conduct complaints is removed from the remit of full Council and included within the remit of the Audit & Governance Committee;
- Inclusion of the power to confer honorary titles, in accordance with the newly adopted protocol, included within the remit of full Council;
- Clarity around the power of the Overview & Scrutiny Committees to report to full Council and/or the Executive;
- Clarity around the number of seats on the Overview & Scrutiny Committees, the appointment to such seats by full Council in accordance with political balance, quorum, no appointment of Executive Members, procedures around substitutes, election of Chairs and power to establish Sub-Committees;
- Clarity around the composition of Planning Sub-Committees, ensuring that the Development Control Committee retains the power to determine planning applications;
- Clarity that the Development Control Committee has the power to make recommendations to the Executive on the budget for the Committee, and to full Council, and has the power to establish Sub-Committees;
- Clarity around the number of seats on the Development Control Committee, how they are appointed to, in accordance with political balance, quorum, election of the Chair, and training requirements;
- Amendments to provide clarity around the terms of reference and remit of each of the Development Control Committee Sub-Committees ie Uplands and Lowlands, to ensure that the constitution provides that appointments to these Sub-Committees are made by the Development Control Committee, from their membership, and that appointments are made in accordance with the rules of political balance, unless members confirm they do not wish to take up their seats as allocated under those rules, which would enable the usual practice of allocating seats to reflect Ward membership to take place;
- Amendments have been proposed to the terms of reference of the Licensing Committee and its two Sub-Committees, the Miscellaneous Licensing Sub-Committee and the Licensing Panel Sub-Committee, with clarity around the remit of each Sub-Committee and confirmation that the Licensing Panel Sub-Committee, that deals with personal and premises licences, is not required by law to be politically balanced;

- Amendment is proposed to the terms of reference of the Audit & Governance committee to ensure they receive an annual report from the MO with a summary of conduct complaints received;
- Amendment is proposed to the terms of reference of the Audit & Governance Committee to enable it to report and make recommendations to full Council as well as the power to raise matters formally with the Executive;
- The Standards Panel is abolished and reconstituted as a Sub-Committee of the Audit & Governance Committee, to be known as the Standards Sub-Committee, with the remit of determining code of conduct complaints referred to it;
- The remit of the Performance and Appointments Committee is expanded to include the statutory role of disciplinary matters relating to statutory officers, in accordance with the Officer Employment Procedure Rules adopted in October 2022 by the Council;
- The Performance and Appointments Committee Panel that dealt with appraisal and performance of the Chief Executive is abolished with that function falling within the remit of the Committee;
- It is proposed that the Urgency Committee is abolished, with emergency and urgency functions to the Chief Executive, with consultation with key members included, be expanded.

2.5 STANDARDS SUB-COMMITTEE PROCEDURE RULES

It is proposed that the Standards Sub-Committee Procedure Rules, in Part 5 of the Constitution, be amended, and the proposed version is set out at Annex E to this report. Currently the Standards Sub-Committee, convenes a panel of 3 members, to hear and determine complaints of member code of conduct breaches, referred to it by the Monitoring Officer. This requires 3 members of the Sub-Committee of 5 to be selected for a Panel; the quorum remains 3, so if a member selected is not able to attend, the panel is inquorate and cannot proceed.

It is recommended, that as the primary remit of the Standards Sub-Committee is the hearing and determination of local code of conduct complaints referred to it, the convening of a panel of members is unnecessary, and there is benefit to such matters being referred to the full Sub-Committee of 5 members to consider. The quorum for the sub-Committee remains 3, so provides some flexibility, as provided 3 of the 5 members are able to attend, and do not have a conflict, the meeting may proceed.

2.6 MONITORING OFFICER PROTOCOL

It is proposed that West Oxfordshire District Council adopt a Monitoring Officer Protocol to be included in Part 6 of their Constitution with other Codes and Protocols.

Annex F sets out the proposed Protocol as recommended by the Constitution Working Group.

The provisions of the new Protocol may be summarised as follows:

- Clarity around the role and responsibility of the Monitoring Officer including the statutory obligation to make public report to the Council in cases of illegality;
- Describes the manner in which the Council expects the Monitoring Officer to discharge their functions;

- Clarifies the statutory requirements around the appointment of a Monitoring Officer;
- Confirms the role of the Deputy Monitoring Officer, when it is effective, and when the duties of the Monitoring Officer may be delegated and when they remain personal to the postholder;
- To confirm functions including reporting on illegality and maladministration, reporting on ombudsman decisions, maintaining the members register of interests and assessing and investigating member code of conduct complaints;
- Inclusion of the responsibility for monitoring, maintaining and interpreting the constitution;
- Provision of resources to support the Monitoring Officer function.

2.7 OTHER AMENDMENTS

The Constitution Working Group on 21st October 2022 noted the earlier decision of the 21/22 Group to remove the requirement for the sealing list to be considered at full Council, and endorsed this approach, noting that there were sufficiently robust and agile procedures in place for dealing with sealing.

The Constitution Working Group on 21st October 2022 gave further consideration to Council Procedure Rule 23.3 regarding whether Councillors should be required by the Constitution to stand when addressing Council. It was decided that the Constitution should be amended, under the Monitoring Officers delegations, to reflect the provision that Members should stand when addressing Council, where they are comfortable to do so.

The Constitution Working Group on 21st October 2022 gave further consideration to rules 11 and 12 of the Council Procedure Rules concerning both public and member questions to Council. They decided that the Constitution should be amended by the Monitoring Officer under delegated powers to reflect:

- There being no limit as to how many questions may be asked by a Member at full Council;
- There remain a total of 30 minutes allocated for public and member questions, with 15 minutes allocated to each, but a provision be included that should the 15 minutes for public questions not be fully utilised, the balance of time remaining could be added to the time allocation for member questions, retaining a 30 minute maximum for both;
- That questions from members to Council will be circulated in writing, together with written responses, in a briefing note, circulated to Councillors at least 24 hours in advance of the meeting, leaving only supplementary questions and answers to be dealt with at the meeting, with a view to easing time pressure.

3. FINANCIAL IMPLICATIONS

- 3.1.** There are no financial implications arising from this report.

4. LEGAL IMPLICATIONS

- 4.1.** Legal implications are addressed in the body of the report.

5. RISK ASSESSMENT

- 5.1.** The changes proposed to the Constitution are proposed with a view to mitigating any current risk facing the Council by way of lack of transparency in process and procedures, leading to reputational damage, and potential non-compliance with statutory requirements.

6. EQUALITIES IMPACT

- 6.1.** The Constitution is made available to all Members and the Public via the Council's website. Where accessibility difficulties are encountered, the Council can provide a copy of the Constitution in different formats.

7. CLIMATE CHANGE IMPLICATIONS

- 7.1.** Not applicable

8. ALTERNATIVE OPTIONS

- 8.1.** To not amend the Constitution which would lead to a lost opportunity in terms of improving agile decision making, promoting transparency and ensuring robust governance arrangements.

9. BACKGROUND PAPERS

- 9.1.** West Oxfordshire District Council Constitution dated 18th May 2022 as amended.
Report to Council dated 19th October 2022
Minutes of the Constitution Working Group meetings

(END)