

CHANGES TO THE COUNCIL'S CONSTITUTION

Council	12 July 2018
Report Author	Committee Services Manager
Portfolio Holder	Jason Savage, Cabinet Member for Corporate Governance and Coastal Development.
Status	For Recommendation
Classification:	Unrestricted

Executive Summary:

This report suggests a number of changes to the Council's constitution following the changes to the Overview and Scrutiny arrangements at the Full Council meeting on the 10 May 2018.

The report goes on to explain the reasoning behind the proposed changes to the constitution and the views of the Constitutional Review Working Party and the Standards Committee on those changes. It is for Council to give final approval to the changes.

Recommendation(s):

To agree the amended constitution as attached at Annex 1 to the report.

CORPORATE IMPLICATIONS

Financial and Value for Money	There are no financial implications to report.
Legal	Under section 37 of the Localism Act 2011, the Council must prepare and keep up to date a constitution. The proposed arrangements would not compromise this requirement.
Corporate	Having a clear and up-to-date constitution helps the Council to display corporate value 3 - open communications. It also helps Officers and Members understanding the rules of the Council contributing to corporate value 2 - supporting the workforce.
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <p>There are no specific equalities implications from this report.</p> <div style="border: 1px solid black; padding: 2px; margin-top: 5px;">Please indicate which aim is relevant to the report.</div>

	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it	
	Foster good relations between people who share a protected characteristic and people who do not share it.	

CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	
Supporting the Workforce	✓
Promoting open communications	✓

1.0 Introduction and Background

- 1.1 This report allows Council to consider the changes that need to be made to the Consultation after the Council's scrutiny arrangements were amended by Full Council on the 10th May 2018. It also shows the views of both the Constitutional Review Working Party and the Standards Committee on these proposed changes.
- 1.2 The main changes to the constitution are:
- amending article 6
 - amending the access to information rules
 - amending the budget and policy framework rules
 - amending the Overview and Scrutiny Procedure rules
 - amending the petition scheme
 - Public participation at Overview and Scrutiny Panel
 - Minor contextual changes allowing for there being two scrutiny panels rather than one.
- 1.3 All the proposed changes to the constitution are shown in track changes at Annex 1 to this report.

2.0 Changes to Article 6

- 2.1 The terms of reference of the previous Overview and Scrutiny Panel have been replaced by the terms of reference of the Executive, Policy and Community Safety Panel and the Finance, Budget and Performance Scrutiny Panel. These terms of reference were reviewed by both Panel's at their meetings in the week commencing 28 May. Their recommendations are outlined later in this report.

3.0 Access to Information Procedure Rules

- 3.1 Paragraphs 15, 18 and 19 have both been amended to clarify that the exception procedures i.e what happens when notification of a confidential report is not given within the correct time scale, when notification of a key decision is not given within the correct timescale and the special urgency rules are under the auspices of the Chairman of the Executive, Policy & Community Safety Panel.

- 3.2 Paragraph 20 is also amended to clarify that the Finance, Budget and Performance Scrutiny Panel, would be the Panel to request a report to Council if it felt that a decision taken by Cabinet as a non-key decision should have been a key decision.
- 3.3 Paragraph 23 has been amended to reflect that either panel has the right to access to documents as set out, however only in so far as it is relevant to the work of the Panel on which they sit.

4.0 Budget and Policy Framework Rules

- 4.1 The budget and policy framework have been clarified to make it clear that the rules as laid out refer to the relevant Scrutiny Panel. In practice meaning that the budget element of the Budget and Policy Framework rules would apply to the Finance, Budget and Performance Scrutiny Panel and the Policy Framework element of the Budget and Policy Framework rules would only apply to the Executive, Policy & Community Safety Panel.

5.0 Overview and Scrutiny Procedure Rules

- 5.1 The Overview and Scrutiny Procedure Rules have been amended to reduce the number of individuals to be co-opted on to Scrutiny Panels. The previous rules stated three people could be co-opted based on a panel of 15 Councillors, however with a panel of only 8 Councillors, this would make the panel unbalanced based on the previously used ratio. Therefore Democratic Services are proposing that the maximum number of co-optees be set at two per panel at any one time.
- 5.2 The procedure rules have also been changed to reflect that it is no longer possible for Overview and Scrutiny Panels to create working parties.
- 5.3 Paragraphs 11 and 13 have been amended to clarify that a Scrutiny Panel may continue to make recommendations, write reports and ask Officers to give account of their actions, but only when relevant to the terms of reference of the Panel.
- 5.4 The call-in rules at paragraph 15 have been amended to reflect that the call-in function is carried out by the Executive, Policy and Community Safety Panel.
- 5.5 The Councillor Call for action rules have also been amended to reflect that these would be considered by the Executive, Policy and Community Safety Panel.

6.0 Petitions Scheme

- 6.1 The petitions scheme has been amended to clarify that petitions requesting a new service or requiring the Council to take action on an emerging matter affecting the local community would be considered by the Executive, Policy and Community Safety Panel and the Finance, Budget & Performance Scrutiny Panel consider those petitions asking the Council to review or rescind a Cabinet or Council decision.

7.0 Public Participation at Overview and Scrutiny Panel meetings

- 7.1 The participation scheme has been changed to reflect that there are now two panels. In addition Democratic Services have taken the opportunity to remove any reference to a trial, the result being that the ability for the public to speak at scrutiny meetings would become a permanent feature of both panels. Whilst the facility to speak at Scrutiny panels has not proved popular, when public speaking has occurred it has

been received well and it could be seen as a retrograde step to withdraw this functionality.

8.0 Minor contextual changes

- 8.1 The rest of the changes shown to the constitution are amending the names of panels and clarifying there are now two panels rather than one.

9.0 Views of the new scrutiny panels

- 9.1 At their meeting of the 29 May the Finance, Budget and Performance Scrutiny panel made the following recommendation:

“Councillor Campbell proposed, Councillor Connor seconded and Members agreed that the Panel recommends to the Constitutional Review Working Party (for onward submission to Standards Committee and Council); the draft terms of reference in Annex 1 to the report and the amendment highlighted above that ‘the Finance, Budget and Performance Scrutiny Panel should have the authority to call-in any executive decisions that are relevant to the business of this Panel.’”

- 9.2 At their meeting of the 30 May, the Executive, Policy and Community Safety Panel did not make any recommendations save to forward their draft terms of reference on to this panel.

- 9.3 Democratic Services do not feel that splitting the call-in function between the two scrutiny panels is a practical way forward. This is for a number of reasons - If a call in on a policy is regarding finance concerns, which panel would be entitled to call in this decision? Would it be the Finance, Budget and Performance Panel because it was about finance or the Executive, Policy and Community Safety Panel because it was about a new policy? Also if a decision was called in for both finance and non finance concerns would both panels consider the call in separately? This would almost inevitably lead to friction between both panels and/or chairmen as to their ability to call in decisions that they feel are relevant to their own terms of reference.

- 9.4 There would need to be a process where each call-in was checked by officers to ensure that it was being called in to the correct panel. It is a matter of fact that staff resources are limited and adding a further unnecessary process seems irrational, especially given the extra work required in operating two panels.

- 9.5 If this was pursued, there would need to be some kind of arbitration process to allow for disagreements between panels and/or chairmen when call-ins occurred. Even with such a process it still couldn't be guaranteed that a compromise could be reached. In such circumstances it may be the case that the Monitoring Officer may have to make a final decision.

- 9.6 It is important to note that the last time that TDC had two scrutiny panels one panel performed the call in function and one did not.

10.0 Views of the Constitutional Review Working Party

- 10.1 The Constitutional Review Working Party met on 14 June 2018 and agreed:

“The Working Party agreed to recommend the changes to the Constitution to the Standards Committee”.

11.0 Views of the Standards Committee

11.0 The Standards Committee met on 27 June 2018 and agreed:

“To recommend the changes to the Constitution to the Full Council.”

12.0 Options

12.1 Council may accept the changes to the Constitution as explained above and shown in Annex 1 to the report, or may choose to make any amendments they see fit.

Contact Officer:	Nicholas Hughes, Committee Services Manager
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Annex List

Annex 1	Amended Constitution
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Background Papers

Title	Details of where to access copy
None	

Corporate Consultation

Finance	Ramesh Prashar, Head of Financial Services
Legal	Tim Howes, Director of Corporate Governance