

Cabinet

17 April 2024

Annual Review of the Constitution

Ordinary Decision



Report of Helen Bradley, Head of Legal & Democratic Services and Monitoring Officer

Councillor Amanda Hopgood, Leader of the Council

Electoral division(s) affected:

All

Purpose of the Report

- 1 To present the proposed changes to the Council's Constitution following the annual review process.

Executive summary

- 2 The Council's Constitution sets out how the Council operates, how decisions are made, and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.
- 3 The Constitution is reviewed on an annual basis. The last review of the Constitution was presented to Council for adoption on 24 May 2023.

Recommendation(s)

- 4 Cabinet is recommended to:
 - (a) approve the delegation of executive powers as set out in the proposed amendments to the officer scheme of delegation at paragraphs 20 – 40 of the report; and
 - (b) recommend that Council agree to the proposed revisions to the Constitution at its meeting on 22 May 2024.

Background

- 5 Section 9P of the Local Government Act 2000 requires local authorities operating executive arrangements to prepare and keep up to date a document (their Constitution) which contains:
- (a) a copy of the authority's standing orders;
 - (b) a copy of the authority's code of conduct for its members and co-opted members;
 - (c) such information as the Secretary of State may direct, and
 - (d) such other information (if any) as the authority considers appropriate.
- 6 The Council must ensure that copies of its constitution are available at its principal office for inspection by members of the public at all reasonable hours and must supply a copy of its constitution to any person on request.

Methodology

- 7 Preparations for the annual review of the Constitution due to be considered by Council on 22 May 2024 commenced in the autumn of 2023, with service representatives being contacted to request that they consider what, if any, changes they believed were appropriate to the Constitution.
- 8 The proposed changes are set out below. Where applicable, relevant extracts of the Constitution showing the proposed changes are provided in **Appendices 1-15** of this report. A table summarising the proposed changes is included at **Appendix 15**.
- 9 There are a number of minor amendments which seek to delete or add single words to correct grammar or numbering errors, or to clarify relevant paragraphs. These are not set out specifically in this report but are reflected in the Table of Changes at **Appendix 15** and within the relevant appendices by way of tracked changes.

Job Titles

- 10 It is proposed to change the job titles as set out below to reflect changes within services since the last Constitution review.
- (a) 'The Head of Highway Services' is now the 'Head of Highways'.
 - (b) The 'Head of Culture, Sport' is now the 'Head of Culture, Sport and Tourism.'

- (c) The ‘Corporate Risk Manager’ is now the ‘Risk, Insurance and Governance Manager.’
- (d) The ‘Corporate Procurement Manager’ is now the ‘Chief Procurement Officer.’
- (e) The ‘Head of Legal and Democratic Services Manager’ will become the Director of Legal and Democratic Services with effect from 1 May 2024.

Part 2 – Articles of the Council

Article 4 – the Full Council

- 11 Paragraph 4.2(a) refers to Local Development Frameworks, which no longer exist. It is therefore proposed to amend this reference to the “County Durham Plan (Plans and alterations that together form the Development Plan).
- 12 It is proposed to include the Council’s Homelessness Strategy within the Council’s Budget and Policy Framework, which would mean it requires approval by full Council. The Housing Strategy is already part of the framework. It is understood that this was agreed following local government re-organisation. Given the close links between the Housing and the Homelessness Strategy it is considered appropriate for both documents to be approved by Council.
- 13 These proposed changes are illustrated in the extract appearing at **Appendix 2.**

Part 3 – Allocation of Responsibilities

Part 3A – Matters Reserved to the Council and Terms of Reference and Delegation of Duties to Committees and Sub-Committees of the Council

Overview and Scrutiny

- 14 Para 1.1(n) currently states that the Chair and Vice-Chair of Corporate Overview and Scrutiny Management Board shall be “additional members of all other Scrutiny Committees,” which is incorrect. They are members but not “additional members.” It is therefore proposed to amend this to reflect that the Chair and Vice Chair of Corporate Overview and Scrutiny Management Board also sit on the thematic scrutiny committees.
- 15 The objectives of Environment and Sustainable Communities Overview and Scrutiny Committee set out at paragraph 1.5 (a) to (d) refer to a previous version of the Council Plan. It is therefore proposed to update

them to reflect the objectives in the current plan which are creating a physical environment that will contribute to good health, working with others to achieve a carbon neutral county, reducing the impact of waste and pollution on our environment and producing, restoring and sustaining our natural environment for the benefit of future generations.

Audit Committee

- 16 In February 2024, the Audit Committee held a workshop to review their effectiveness. They considered the role and responsibilities of the Committee as set out in the CIPFA guidance “Guiding the Audit Committee: Supplement to the Audit Committee Member Guidance.” The Committee’s work programme is consistent with the best practice guidance, however it has been identified that the terms of reference in the Constitution are out of date. It is therefore proposed to revise the terms of reference so that they reflect the CIPFA Guidance. The revised terms of reference, which are attached at **Appendix 3** include responsibility for scrutiny of the Council’s treasury management performance. Members of the Committee will receive training with regard to this scrutiny role.

Statutory Licensing Committee

- 17 Paragraph 2.4 of Part 3A currently states that the Statutory Licensing Committee is a sub-committee of the General Licensing and Registration Committee, which is incorrect. It is proposed to amend this to clarify that the Statutory Licensing Committee comprises of 15 Members of the Council drawn from 27 Members of the General Licensing and Registration Committee.

Joint Arrangements

Health and Well-being Board

- 18 There are a number of changes proposed to reflect changes to the membership of the Board as well as its functions. There have been significant changes to the membership of the Board which have been amended. In terms of its functions, additional wording has been added for clarification. For example, the Joint Strategic Needs Assessment is now the Joint Strategic Needs and Assets Assessment and the Joint Health and Wellbeing Strategy is now the Joint Local Health and Wellbeing Strategy. Information has been added to explain the role of these, and other assessments and strategies. The proposed changes can be found at **Appendix 3**.

Safe Durham Partnership

- 19 The review has identified that there is no reference to the Council's Statutory Community Safety Partnership. It is proposed to correct this anomaly by including the terms of reference for the Safe Durham Partnership in a new paragraph 4.10. The proposed changes are set out at **Appendix 3**.

Part 3A – Matters reserved to the Council and Terms of Reference and Delegation of duties to Committees and Sub-Committees of the Council

- 20 In advance of the annual meeting of Council, Constitution Working Group will be asked to consider a proposed amendment to the arrangements of the Chief Officer Appointments Committee (COAC) to reflect that the Leader and Deputy Leader of the Council will be the Chair and Vice-Chair of the Committee. This has always been the case since the Committee was established and is appropriate given its responsibilities regarding the appointment and dismissal of the Chief Executive and Chief Officers. This amendment would mean that there would no longer be a requirement to appoint to these positions at the annual meeting of Council.
- 21 The proposed change is a matter for Council to approve. If Constitution Working Group are supportive of the proposal, it will be included within the report presented to the annual meeting of Council for approval.

Part 3C – Officer Delegations

Delegations to the Chief Executive (Table 2)

- 22 It is proposed to update Table 2 to reflect the Chief Executive's role as Acting Returning Officer at UK Parliamentary elections for completeness and to ensure the scheme of delegation reflects the Association of Electoral Administrators guidance. The proposed changes are set out at **Appendix 5**.
- 23 With effect from the 1 May, the Director of Legal and Democratic Services will report directly to the Chief Executive in accordance with best practice. Accordingly, the delegations to the Head of Legal and Democratic Services, which currently sit under the Corporate Director of Resources will need to move from Table 8.

Delegations to the Corporate Director for Regeneration, Economy and Growth (Table 3)

- 24 Responsibilities in relation to the conservation of the built environment have migrated to the Head of Planning and Housing, under the Corporate Director for Regeneration, Economy and Growth from the Director of Neighbourhoods and Climate Change. It is therefore proposed that the relevant delegations under the Corporate Director for Neighbourhoods and Climate Change are moved under the Head of Planning and Housing.
- 25 Table 3 is currently drafted on the basis that the Corporate Director for Regeneration, Economy and Growth is responsible for all matters in relation to the Council's statutory duties as a local housing authority. However, some of these duties sit under the Corporate Director for Neighbourhoods and Climate Change. It is proposed that Table 3 is amended for accuracy. Corresponding changes are proposed in relation to the scheme of delegation for the Corporate Director for Neighbourhood and Climate Change (paragraph 30 below refers). These proposed changes are illustrated in the extract appearing at **Appendix 5**.
- 26 The Scheme of Delegation currently includes responsibilities for transport, which are delegated from the North East Combined Authority (NECA) to the Council. It is anticipated that delegations will be required in relation to the functions of the North East Mayoral Combined Authority. These are still being identified and will be the subject of a separate report.

Delegations to the Director of Public Health (Table 5)

- 27 At paragraph 12 of Table 5, it is proposed to remove a duplicate reference to the Council's responsibilities in relation to communicable and infectious diseases including healthcare acquired infections, which are covered under paragraph 1(c) of Table 5. These proposed changes are illustrated in the extract appearing at **Appendix 6**.

Delegations to the Corporate Director of Children and Young People's Services (Table 6)

- 28 Officers in Children and Young People's Services have reviewed their Corporate Director's Scheme of Delegation (Table 6). They advise it would be more helpful if the respective powers of each Head of Service were set out in more detail for clarification. Consequently, Table 6 has been substantively re-written. The amendments do not however include the delegation of any new powers and relate to existing functions already discharged by the relevant officers. These proposed changes are illustrated in the extract appearing at **Appendix 7**.

Delegations to the Corporate Director of Neighbourhoods and Climate Change (Table 7)

- 29 The Environment, Health and Consumer Protection team is now called the Community Protection Service. Therefore, it is proposed that all references to the service name are updated accordingly.
- 30 In addition to the changes proposed at paragraph 21 above it is proposed that the list of Executive Functions is amended to include reference to safer communities, private sector housing regulation, public health protection and infectious disease outbreak control, special criminal investigations including tobacco control and operational community safety. This will ensure that the functions of the Community Protection Service are properly reflected.
- 31 There are a number of delegated powers in relation to enforcement functions, licensing and registration which require consultation with the Head of Legal and Democratic Services. Such consultation is only required in certain circumstances such as in relation to the instigation of legal proceedings. It is therefore proposed to clarify that consultation with the Head of Legal and Democratic Services (Director of Legal and Democratic Services from 1 May) is required “where appropriate”.
- 32 As referred to above, the Community Protection Service also has responsibility for the discharge of the Council’s housing duties. It is therefore proposed to include delegations relating to private sector housing, enforcement and selective licensing.
- 33 It is also proposed to include reference to the powers in relation to the issue and revocation of scrap metal dealers licences in accordance with the Scrap Metal Dealers Act 2013.
- 34 It is also proposed to make some minor amends to clarify the provisions in relation to paragraph 9 of Table 7 of the Constitution and the planning and delivery requirements for welcoming and supporting refugees seeking asylum, including capacity within the County as part of the Government Migration Programme.”
- 35 Appendix 1 of Table 7 sets out the ‘Delegation of Licensing Act 2003 responsibilities’. It is proposed to update the provisions in relation to temporary event notices to reflect that Environmental Health Officers as well as the police can object to temporary event notices. It is also proposed to amend references to “representations” in respect of temporary event notices to “objection notices” so that the terminology is consistent with the wording in the legislation.
- 36 These proposed changes are illustrated in the extract appearing at **Appendix 8.**

Delegations to the Corporate Director of Resources (Table 8)

- 37 The Corporate Director of Resources has delegated authority to terminate employment of staff by reason of early retirement with voluntary redundancy where there is a cost to the Council associated with the early release of pension benefits, in consultation with the relevant Portfolio Holder. It is proposed to amend the punctuation to clarify that the Corporate Director of Resources also has authority to terminate employment by reason of early retirement or voluntary redundancy where there is no cost to the Council.
- 38 In August 2023, a proposal to introduce a flat rate weekly charge of £5 per week for those in residential care and £7.50 per week for those living in the community for the provision of an appointeeship service was agreed. This was implemented from 1 October 2023. It is proposed to include a delegated power to the Corporate Director of Resources to be able to review and amend the policy.
- 39 There a number of minor changes proposed to the delegations relating to Corporate Finance and Commercial Services, which are intended to clarify the scope of powers rather than add to them. set out in paragraphs 37 - 39 of this report below.
- 40 Regulations made under the Local Government Finance Act 1992 require each billing authority to calculate its 'council tax base' for the following financial year. Therefore, it is proposed to include provision "to set the Council Tax Base at Local Council level and to forecast and manage the Council's Collection Funds, making adjustments to principal precepting bodies as appropriate.
- 41 Responsibility for maintaining accounting records in relation to the Pension Fund sits with the Head of Pensions rather than the Head of Corporate Finance and Commercial Services. It is therefore proposed that these will be moved to the relevant section of Table 8.
- 42 The review has highlighted that the references to appeals in relation to disputes under the Local Government Pension Scheme are very limited and only relate to stage 2 of the process. It is therefore proposed to clarify arrangements by including responsibility for implementing and maintaining an appeals process under the dispute procedure for the Local Government Pension Scheme under the Head of Pensions and Stage 2 appeals within the remit of the Head of Legal and Democratic Services.
- 43 These proposed changes are illustrated in the extract appearing at **Appendix 9.**

Council Procedure Rules

- 44 It is proposed that rule 1.1(ii) deleted as it refers to Coronavirus legislation that is no longer in force.
- 45 It is also proposed to correct a numbering error at paragraph 12.5 which has two paragraphs 12.5(a).
- 46 These proposed changes are illustrated in the extract appearing at **Appendix 10**.

Executive Procedure Rules

- 47 Paragraph 1.2 of Part 4D – Executive Procedure Rules references Article 6, which relates to ‘Overview and Scrutiny Arrangements’ . However, it should refer to The Executive, which is Article 5.
- 48 These proposed changes are illustrated in the extract appearing at **Appendix 11**.

Financial Procedure Rules

- 49 There are very few substantive changes recommended to the Financial Procedure Rules. However, minor amendments have been made to aid clarity and reflect legislative changes. The proposed amendments appear in **Appendix 12**.
- 50 As explained at paragraph 16 above, the revised terms of reference include responsibility for the scrutiny of the Council’s treasury management performance. It is therefore proposed to include reference to this within paragraph 2.3.1 of the Finance Procedure Rules, which sets out the role of the Audit Committee.
- 51 It is proposed to make some substantial changes to Appendix A to the Finance Procedure Rules to reflect a number of changes in the Financial Management Standards. Some of the documents have been amalgamated and numbers not reallocated, therefore there are gaps in the numbering. An existing and proposed Appendix A are appended at **Appendix 12** to this report for Members’ consideration.
- 52 These proposed changes are illustrated in the extract appearing at **Appendix 12**.

Contract Procedure Rules

- 53 No substantive changes are recommended to the Contract Procedure Rules. However, minor amendments have been made to aid clarity and reflect legislative changes. The proposed amendments appear in **Appendix 13**.

Code of Practice for Members and Officers Dealing with Planning Matters

- 54 It is recommended that reference to the Audit Commission be removed from the Code as it has been replaced by the National Audit Office.
- 55 In January 2024, Lawyers in Local Government (“LLG”) issued an updated model Members Planning Code of Good Practice to its members. LLG’s model code has been said (by the Supreme Court) to offer “sound practical advice.”
- 56 Officers reviewed the provisions of the LLG model Code and whilst it is not felt that adopting it wholesale would be in the best interests of the Council at this time, there are several provisions within it that officers consider ought to be incorporated into the Code of Practice.
- 57 The main amendments relate to highlighting and clarifying the respective roles, responsibilities and duties of members and officers at planning committees. In particular, the proposed amendments to paragraph 3.4 of the Code emphasise the potential risks to members if planning applications are not determined in accordance with legal requirements.
- 58 The proposed paragraph 9.2 clarifies the professional duties to which planning officers are subject.
- 59 Proposed paragraphs 11.3 and 11.4 of the Code of Practice offer some advice to members regarding their use of social media or contact with applicants during committee meetings.
- 60 The final main element of the proposed amendment attempts to address issues raised by members and officers in respect of site visits by members of the committee. It is therefore proposed that paragraph 10 of the Code of Practice be amended to expressly clarify the roles of relevant parties before and during site visits.
- 61 The proposed amendments appear in **Appendix 14**.

Background Papers

[None](#)

Other useful documents

None

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Appendix 1: Implications

Legal Implications

The statutory requirements in relation to the Council's Constitution are set out in paragraph 5 of this report.

Finance

The review of the Constitution has no financial implications.

Consultation

Constitution Working Group considered the proposed changes to the Constitution at its meetings on 22 February and 19 March 2024. The Group were supportive of the proposed changes.

Equality and Diversity / Public Sector Equality Duty

None specific for this report.

Climate Change

None specific for this report.

Human Rights

None specific for this report.

Crime and Disorder

None specific for this report.

Staffing

None specific for this report.

Accommodation

None specific for this report.

Risk

None specific for this report.

Procurement

None specific for this report.