

Annual Review of the Constitution

Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

Councillor Simon Henig, Leader of the Council

Electoral division(s) affected:

Countywide

Purpose of the Report

1. To present proposals for the revision of the Council's Constitution.

Executive summary

2. The Council's Constitution describes the four methods by which the Council operates: The Council, the Executive, Overview and Scrutiny, and the Committees. It also provides the framework within which each must operate by including:
 - (a) the rules and procedures to be followed by the Council and committees when conducting their business;
 - (b) the decision-making powers of the Council, Executive, Committees and Officers;
 - (c) the financial and contract regulations;
 - (d) the rights of the public;
 - (e) codes of conduct for councillors and employees;
 - (f) members' allowances.
3. A fundamental review of the Constitution was undertaken and approved at the annual Council meeting in May 2018 followed by a routine review in May 2019. The review due in May 2020 was deferred due to restrictions on public meetings in place at the time as a result of the Covid-19 pandemic.
4. This report sets out the proposed updates to the Constitution incorporating the changes which were scheduled to be considered by Council in May 2020 together with a small number of changes which have been identified during this municipal year.

Recommendation

5. Subject to the recommendations from Cabinet on 17 March, Council is asked to agree the proposed revisions to the Constitution.

Background

5. Section 37 of the Local Government Act 2000 requires local authorities operating executive arrangements to prepare and keep up to date a document which contains:
 - (a) such information as the Secretary of State may direct;
 - (b) the authority's standing orders (i.e. rules of procedure);
 - (c) the code of conduct for members; and
 - (d) such information as the authority considers appropriate.
6. The Council must ensure that copies of the above are available for inspection by the public at all reasonable hours and supply a copy of the same upon request (upon payment of such reasonable fee as we may determine).
7. Durham County Council's Constitution is available on the Council's website and is reviewed on an annual basis.

Changes to the Constitution as a result of the Covid-19 Pandemic

8. At the Council meeting in October 2020, the Corporate Director, Resources presented a report advising of changes to the Constitution which he had authorised using the urgency powers within the Officer Scheme of Delegation. These changes were required to amend the Council's Procedure Rules to facilitate remote meetings.

Methodology for the Annual Review

9. Preparations for the annual review of the Constitution due to be considered by Council in May 2020 commenced in the autumn of 2019, with Directors and Heads of Service being contacted to request that they consider what, if any, changes they believed were appropriate to the Constitution. Due to the covid-19 pandemic the Council meeting to consider the annual Consultation review were not presented in May 2020 as planned.
10. Those changes are presented within this report together with any changes identified by Corporate Directors and Heads of Service as part of the 2020-21 review.
11. The proposed changes are summarised below. The relevant extracts of the Constitution showing the proposed changes are shown at appendices 2 – 15 of this report.

Glossary of Terms

12. The explanation of Overview and Scrutiny has been updated to be more succinct which is shown at Appendix 2, this is a simple revision of the wording.

Article 5 – Overview and Scrutiny Arrangements

13. Following the adoption of the County Durham Vision 2035 the Terms of Reference for the Council's Overview and Scrutiny Committees are to be updated to reflect the new vision and emerging Council Plan. There are proposed changes to the Terms of Reference at Article 5 to align with the County Durham Vision 2035.
14. There is also a proposed update at Article 5.03 (d) to include (that in addition to the annual report), half yearly reports on key issues from the Overview and Scrutiny Activity will be presented. The proposed changes relating to Overview, and Scrutiny arrangements are shown at Appendix 3.

Article 8 – Joint Arrangements

15. The County Durham Integrated Care Board has been established and is incorporated into the joint arrangements. The purpose of the Board is to provide a system wide leadership and accountability for the delivery of integrated service models within County Durham's Health and Care economy.
16. It is therefore proposed that Article 8 is updated to reflect the up to date Joint Arrangements. The proposed changes to Article 8 are shown at Appendix 4 of this report.

Article 9 – Officers

17. The Chartered Institute of Public Finance and Accountancy (CIPFA) issued a statement on the role of Chief Internal Auditor in the public sector (the Chief Internal Auditor and Corporate Fraud Manager within Durham County Council), to ensure that the role has sufficient profile within the authority and is clearly understood. It is considered good practice to reflect the role in promoting and ensuring good governance within the Council's Constitution. It is therefore proposed to include reference to the role of Head of Internal Audit within Article 9. These changes are shown at Appendix 5.
18. In addition, there are some amendments required to realign functions following changes to the Corporate Management Team Structure and to reference areas of responsibilities for completeness. These

amendments are considered to be technical and do not require Council approval. They are therefore not appended to the report but can be summarised as set out below.

19. Corporate Director of Adult and Health Services, the functions and responsibilities will be updated to reflect the following areas:
 - Older people, physical disability and sensory impairment
 - Learning disability
 - Mental health
 - Adult Protection
 - Integrated Social Work/Health Teams
 - In-House Care provision
 - Community Safety – Counter-Terrorism (Prevent)
 - Commissioning Services
 - Public Health functions
20. Neighbourhoods and Climate Change, the functions and responsibilities will be updated to include:
 - Environment Protection including Pollution Control, Contaminated Land, Air Quality Management, Public Health and Private Sector Housing.
 - Health Protection including Food Hygiene and Standards, Animal Health and Welfare, Infectious Disease Control, Safety and Occupational Health, Health and Safety (Employees).

Article 11 – Finance, Contracts and Legal Matters

21. Due to changes in working arrangements and the ambition of the Council to reduce paper records, it is proposed that there is a variation to the procedure to apply the Common Seal of the Council to permit this to be affixed electronically.
22. A seal can be executed electronically which is set out at Section 7A(1) of the Electronic Communications Act 2000 which provides that, in any legal proceedings:
 - (a) an electronic seal incorporated into or logically associated with a particular electronic communication or particular electronic data, and
 - (b) the certification by any person of such a seal,

shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data, the integrity of the communication or data, or both.

23. The proposed change is shown at Appendix 6 of this report.

Officer Scheme of Delegation

24. There are a small number of technical changes to the scheme of delegations to reflect the organisational changes and the work within the respective Directorates. The Head of Legal and Democratic Services has delegated authority to make technical changes to the Constitution and as such the scheme of delegations will be updated to ensure that the work within each Directorate are accurate and reflect the staffing structures. These have not been reproduced for the purpose of this report but are outlined below at paragraphs 26 - 28 for information.

Table 3 - Director of Regeneration, Economy and Growth

25. A realignment has taken place in respect of the function for Communication and Marketing. This has moved from the Chief Executive to the Director of Regeneration, Economy and Growth. This change will be updated in the scheme of delegation to reflect this minor change in structure.

Table 6 – Corporate Director for Neighbourhoods and Climate Change

26. The executive function which is currently shown in the Adult Health Service scheme of delegations is to be inserted to the Neighbourhood and Climate scheme of delegation to reflect the work of the Directorate. This executive function reads “ensuring that the local authority has a panel of persons in place for its area (known as Channel), as required under the Counter Terrorism and Security Act 2015.” The function of this panel is to assess the extent to which identified individuals are vulnerable to being drawn into terrorism and to develop a support plan for that individual. As this is a technical change this has not been reproduced for this report.
27. In addition to the technical changes which are set out above there are two further changes proposed requiring approval set out below and reproduced at Appendix 7 and 8.

Table 4 - Corporate Director of Adult and Health Services

28. Following the creation of two new posts within Adult and Health Services, namely the Director of Integrated Community Services and Head of Integrated Strategic Commissioning, it is proposed that there are updates to the delegations shown in Table 4 to ensure the effective running of the service and discharge of functions. The proposed changes are shown at Appendix 7.

29. In conducting this year's annual review, Officers have noted that the whole scheme of delegation requires a review to ensure that powers remain under the correct Directorate and that they reflect up to date legislation and roles and responsibilities. The issue of separate schemes for statutory Officers could be considered as part of that review next year.

Table 7 - Corporate Director of Resources

30. Prior to the annual review of the Constitution in 2018, the Council's HR Committee was responsible for discharging the Council's functions in relation to local government pensions, with the exception of policy formulation and review. This included determining the early release of pension benefits and approval of Early Retirement/Voluntary Redundancy applications where there was a cost to the Council.
31. Following the discontinuance of the Committee in May 2018, these functions were delegated to the Corporate Director for Resources in consultation with the Cabinet Member for Social Inclusion (now the Cabinet Member for Corporate Resources and Rural Issues).
32. However, there was an error in the drafting and the delegation reads "to authorise the termination of employment of staff by reason of early retirement and or voluntary redundancy (rather than early retirement/voluntary redundancy)".
33. This has the effect of requiring the Corporate Director for Resources having to consult the portfolio holder in relation to all cases of voluntary redundancy, which is inconsistent with the principle that Members are not involved in employee matters except where the Council's procedures provide for this.
34. It is also inconsistent with the delegation to all Chief Officers to make establishment changes up to Head of Service level and what happens in practice. It is therefore proposed to amend the delegation to accurately reflect the arrangements which have been adopted locally since the discontinuance of the HR committee. The proposed changes are shown at Appendix 8.

Council Procedure Rules

35. It is proposed to amend the Rules of Debate within the Council Procedure Rules to clarify that any motion on a matter relating to decisions or functions of the Cabinet will be referred to Cabinet for consideration, if the motion is carried. Council cannot overturn or change executive decisions of the Cabinet.

36. It is also proposed to amend the Council Procedure to reflect the custom and practice that nominations to Committees and Outside Bodies are voted upon without debate.
37. As part of this year's review, Officers were asked to consider the rules in relation to Members Questions and to make provision for members other than the Portfolio Holder to respond.
38. The Council Procedure Rules provide that members can ask a question of the Chair, a member of the Executive or the Chair or any committee or sub-committee, on any matter in relation to which the Council has powers or duties or which affects the Council.
39. Where a question is put and appears beyond the remit of the Member to which it is directed (e.g. the question put to a Cabinet Portfolio Holder references scrutiny), the Chair may invite the relevant Member to also provide a brief response.
40. The proposed changes are shown at Appendix 9.

Executive Procedure Rules

41. The Executive Procedure Rules currently provide that where a member wishes to ask a question, they must give notice by 2pm, two working days before the meeting of the intention to ask a question and the reason for the question but not the question itself.
42. A delay between notice of intention to ask a question and receipt of the question impacts on the ability to prepare an answer in advance of the meeting. It is therefore proposed that the requirement is amended so that questions must also be provided by the deadline to ensure that it can be answered fully during the meeting. The proposed amendments are set out in Appendix 10.

Overview and Scrutiny Procedure Rules

43. In May 2019 the Ministry of Housing, Community and Local Government issued statutory guidance for overview and scrutiny in local and combined authorities.
44. The councils Overview and Scrutiny arrangements have been reviewed in light of the new guidance. Generally, the existing arrangements are considered to be robust and effective with much of the recommended practice already being adopted with a small number of areas for development which includes the inclusion of a periodic update from Overview and Scrutiny to council in addition to the current annual report and minor updates on the terminology.

45. It is proposed that the provisions for call-in requests are clarified to reflect current practice specifically that the reasons for refusing call-in will be provided. The proposed updates are shown at Appendix 11.

Contract Procedure Rules

46. The Procurement Strategy & Planning (PSP) group considered the changes to be made to the Contract Procedure Rules to ensure that the rules reflect the current practice, guidance and relevant legislation. The amendments proposed to the Contract Procedure Rules (and shown at Appendix 12):

- Inclusion of additional wording at 1.1.5 to allow for flexibility as further Procurement Policy Notes are issued by the Cabinet Office, and which we are required to follow.
- Rule 5 – exemptions to the CPRs have been updated and re-formatted. Minor changes for clarity, plus additional exemptions for statutory payments, and payments for services with regards to spend for Communities of Learning (Education Service, Children and Young People Services)
- Rule 5(b) – the change provides clarity that there is an addition to the exemption rule regarding statutory government set payments for interagency adoption fees.
- Rule 7 – the change is in relation to Risk Assessments, to clarify the distinction between the requirement for a project risk assessment and a procurement risk assessment.
- Additional section at 9.1.5 regarding the potential to reserve competition as included within Procurement Policy Note 20-11.
- Clarity provided at Rule 9.2.2 (a) with regard to the technical compatibility.
- Rule 10 - this change shows the additional requirement that where Quick Quote is used the service must identify two organisations to be invited to the Quick Quotes competition issued via the Council's tendering system.
- Rule 23 - it is proposed to include a requirement that Service Areas must seek procurement advice in relation to external grant funding applications, which include a third-party supplier.

Member Code of Conduct

47. On 4 March 2019, the Standards Committee agreed to review the Code and consider revisions taking into account the best practice recommendations in the Committee for Standards in Public Life (CSPL) report on Local Government Ethical Standards.
48. The CSPL report identifies a series of recommendations, some requiring the introduction of primary legislation and others suggested best practice. The recommendations requiring changes to primary legislation cannot be implemented until the legislation is implemented and therefore the proposed updates are linked only to the best practice recommendations arising from the CSPL report.
49. On 7 June 2019 the Standards Committee considered and approved the proposed changes to the Member Code of Conduct, Local Assessment Procedure and Local Determination Procedure. The proposed changes to the Member Code of Conduct are incorporated into the constitution review with the proposed changes to the Code of Conduct shown at Appendix 13. In addition to these changes there will be changes to the Local Assessment Procedure and Local Determination Procedure which have been agreed by the standards committee.
50. On 3 March 2021, the Standards Committee considered the Model Member Code of Conduct which was published by the Local Government Association in December 2020. The Committee noted that subject to the revisions referred to at paragraph 50, the County Council's existing Code largely reflects the provisions within the model.
51. The Committee agreed to recommend to Council to amend the Code to include an express provision for Members not to bring the authority into disrepute and also to include examples of what amounts to treating others with respect and how to deal with disrespectful behaviour from others.
52. The Committee considered that recommending these changes was a proportionate response to the model Code rather than a wholesale adoption of an entirely new Code. If the changes are adopted, the Council's Code will reflect best practice.

Member Code of Conduct and Code of Practice for Members and Officers Dealing with Planning Matters

53. On 17 December 2019, the Standards Committee considered a report of the Head of Legal and Democratic Services in relation to Member interests, specifically Other Relevant Interests.

54. Paragraph 9 of the Council's Member Code of Conduct provides that:

"Members may have an other relevant interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the meeting where:

- (a) a decision in relation to that matter might reasonably be regarded as affecting the wellbeing or financial standing of them or a member of their family or a person with whom they have a close association or an organisation or body under paragraph 5.1(b), 5.1(c) or 5.1(d) above to a greater extent than it would affect the majority of the council tax payers, rate payers or inhabitants of the ward or electoral area for which they have been elected or otherwise of the authorities administrative area; and
- (b) the interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest."

55. Paragraph 9.2 of the Code goes on to state that where a Member has an other relevant interest, they must declare it either at or before consideration of the item of business or as soon as the interest becomes apparent. The Member must not participate in any discussion or further discussion of an item or in any vote taken on that item and must leave the room whilst the discussion and voting takes place.
56. There are corresponding provisions at paragraphs 3.1 and 3.2 of the Code of Practice for Members and Officers dealing with planning matters.
57. The provisions which prevent Members from speaking on matters where they have "an other relevant interest" are quite strict. Other authorities allow Members with such interest to speak but withdraw prior to the vote. Others do not have provisions relating of other relevant interests at all.
58. There have been instances at planning committee where Ward Members have been precluded from speaking on matters which relate because they have an other relevant interest and the other ward councillors have not been able to attend to represent residents' views. This has caused concern at the ability of ward councillors to fulfil their duties. Since other relevant interests are provided for under the Member Code of Conduct rather than by legislation, there is no reason in law why members cannot speak on an item where they have a relevant interest but withdraw before the vote is taken. This approach is adopted in other local authorities where other relevant interest provisions have been retained.

59. Standards Committee resolved to recommend that Council amends the Code to enable Members with an other relevant interest to speak on a matter and withdraw for the vote. Constitution working group were also supportive of the proposed changes. If agreed the Code of Conduct for Members will be updated to reflect the changes as well as the Code of Practice for Members and Officers Dealing with Planning Matters. The proposed are shown at Appendix 14.

Frequency of meetings

60. It is proposed that the wording relating to the number of meetings be revised to read “It is aimed that there will be a minimum of [number] meetings”. Currently the wording is shown that there “will be a minimum of” or “at least [number] meetings will be held”. The proposed change will allow greater flexibility on the frequency of the meetings in the event of disruption to the meeting schedule. The changes have not been reproduced for the purpose of this report in view of this being a slight variation to be amended to all meetings referenced in the Constitution.

Code of Values, Behaviours and Conduct

61. The CCE forms for staff to complete in respect of declarations of interests have been updated to be available in a digital format. As a result of the digitalisation of the former the Code of Values, Behaviours and Conduct has been updated, an extract of the code showing the changes is shown at Appendix 15

Minor Changes

62. As part of the review other minor amendments to correct typographical errors will be undertaken which have not been reproduced for the purpose of this report.
63. Cabinet will consider the proposed amendments and in particular the proposed amendments to the Officer Scheme of Delegation at its meeting on 17 March 2021. The outcome of that consideration will be reported to the Council meeting on 24 March 2021.

Background papers

- DCC's Constitution document

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