

## **Cabinet**

**13 March 2025**

## **Annual Review of the Constitution**

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

**Councillor Amanda Hopgood, Leader of the Council**

### **Electoral division(s) affected:**

Countywide.

### **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 22 May 2024.

### **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 23 – 42 of the report; and
  - (b) Recommend that Council agree to the proposed revisions to the Constitution at its meeting on 19 March 2025.

## 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 the Council on 26 March 2025 commenced in the autumn of 2024, 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 2 - 19** of this report. A table summarising the proposed changes is included at **Appendix 20**.
- 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 20** and within the relevant appendices by way of tracked changes.

## Cover and Contents

- 10 If the amendments are approved by the Council, then the contents pages will be updated to reflect the changes.

## Job Titles

- 11 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 Economic Development' is now 'The Head of Inclusive Growth and Partnerships'.
- (b) The Head of Partnership and Community Engagement post has been deleted and its responsibilities reallocated across Regeneration, Economy and Growth, Neighbourhoods and Climate Change and Corporate Affairs. It is therefore proposed that references to this job title are deleted.

## **Part 1 – Summary and Explanation**

- 12 Following the decision of the Local Government Boundary Commission Review to reduce the number of Councillors it is proposed that the figure is amended from 126 to 98. This will be reflected throughout the Constitution and proposed changes are shown in **Appendix 20**.

## **Part 2 – Articles of the Council**

### **Article 5 – The Executive**

- 13 Paragraph 5.2, which deals with the appointment of the Leader of the Council references the election to that position at the annual meeting 2021, which is when the last election for Leader of the Council took place. To avoid having to update this in every election year, it is proposed to amend the wording to state that the "Leader of the Council will be elected at the annual meeting immediately following the County Council elections". The remainder of the paragraph including when the Leader ceases to hold office remains unchanged.

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

### **Committees and Sub-Committees of the Council**

- 14 Following the LGBCR and the reduction in Council size, the number of seats on the following Committees have been reduced by 22%:

### **Overview and Scrutiny Arrangements**

- 15 The Council's company governance arrangements have been reviewed in accordance with the Local Partnerships Local Authority Company Review Guidance 2023. The review highlighted that there is no specific reference to company governance arrangements within the terms of reference for Scrutiny Committees. Whilst this does not preclude Scrutiny Committee considering the council's company governance arrangements, it is best practice for such activity to be expressly referred to in the terms of reference.

- 16 In order to reflect the review, it is proposed to include that Corporate Overview and Scrutiny Management Board will be able to call the Cabinet to account for the progress in relation to any company which the Council is shareholder and any returns it is making. Other thematic scrutiny committees may receive reports relevant to their remit of the Committee on the Council's alternative delivery arrangements through owned and controlled entities.
- 17 As part of the review of arrangements for implementing the Local Government Boundary Commission Review in May 2025, the Council has reviewed its scrutiny arrangements to include a review of the current scrutiny themes and terms of reference to ensure that they continue to reflect best practice.
- 18 Following a workshop with members on 31 January 2025, it is proposed that the existing OSC structure comprising a Corporate Overview and Scrutiny Management Board (COSMB) and five thematic Overview and Scrutiny Committees is retained. This structure supports the current mechanism for developing OSC work programmes and Terms of Reference which monitor delivery against the County Durham Vision, its ambitions and the Council Plan objectives. These will be reviewed annually following the annual refresh of the Council Plan.
- 19 The Overview and Scrutiny: "statutory guidance for councils, combined authorities and combined county authorities April 2024 (the Statutory Guidance) recommends that Council's adopt an Executive-Scrutiny Protocol to provide clarity as to how scrutiny operates within the Council. The Protocol attached at **Appendix 5** was considered by the workshop and at Constitution Working Group on 17 February 2025 who were supportive of the Protocol being adopted within the Constitution.
- 20 Overview and Scrutiny and the Audit Committee feature strongly in robust Corporate Governance arrangements and in undertaking this review, members have referenced the Council's Corporate report writing protocol which includes at Appendix 1 a section where key risk implications should be identified by report authors and members agreed that this should be given more emphasis and thought for reports to Scrutiny.
- 21 It is also recommended that twice – yearly meetings between the Chairs and Vice Chairs of the Audit Committee and Overview and Scrutiny Committees be incorporated into the Council's governance arrangements to ensure appropriate dialogue in respect of key risks associated with the County Durham Vision; Council Plan and service plan priorities and actions; how these are managed and any identifiable mitigations to reduce the likelihood of risks or their impact. It was also highlighted that any such issues could be reported into Council via the

Audit Committee Annual report; the Overview and Scrutiny Annual Report and referenced in the Annual Governance Statement.

- 22 Members attending the workshop reflected that having cross party Chairs and Vice Chairs appointed to Overview and Scrutiny Committees had worked well. Constitution Working Group asked Officers to explore amending the Constitution to ensure that the appointments to Chairs and Vice-Chairs are always cross party. A further report will be considered by Constitution Working Group on 6 March 2025. The outcome of this meeting and any proposed amendments to the Constitution will be reported to Cabinet on 12 March 2025 for consideration.

### **Audit Committee**

- 23 The review of company governance arrangements also highlighted that there is no specific reference to company governance arrangements within the Audit Committee's terms of reference. Again, this does not preclude Audit Committee from considering such arrangements, but best practice suggests explicit reference should be made. It is therefore proposed to include the following wording within the terms of reference to give assurance to governance arrangement to receive and review the Council's annual accounts, the annual accounts and audit reports of Council's wholly owned subsidiary companies.

## **Part 3C – Officer Delegations**

### **Delegations to the Chief Executive (Table 2)**

- 24 As the Director of Legal and Democratic Services and the Head of Sports, Culture and Tourism have been re-aligned to the Chief Executives Office, it is proposed that paragraph 12 is amended to reflect that the Chief Executive has the authority to carry out the executive functions in relation to these areas.
- 25 Following the deletion of the Head of Partnerships and Community Engagement post, responsibility for the supporting and co-ordinating of partnership boards has been re-aligned to the Head of Corporate Affairs. It is therefore proposed that this change is reflected within their scheme of delegation at Table 2.

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

- 26 Following the resignation of the Corporate Director of Regeneration, Economy and Growth, the Chief Officer Appointments Committee have agreed the following permanent alignments:

- (a) The Head of Transport and Contract Services will be re-aligned to the Corporate Director of Neighbourhoods and Climate Change;
  - (b) The Head of Corporate Property and Land will be re-aligned to the Corporate Director of Resources.
- 27 The Chief Officer Appointments Committee have also agreed the following interim alignments:
- (a) The Head of Inclusive Growth and Partnerships and the Head of Culture, Tourism and Sport will report to the Chief Executive;
  - (b) The Head of Planning and Housing will report to the Corporate Director of Neighbourhoods and Climate Change.
- 28 It is proposed that the permanent changes are reflected within the Constitution but that the scheme of delegation will remain unchanged in relation to the interim arrangements
- 29 Following the removal of the Head of Partnerships and Community Engagement, the responsibility for the expenditure of Neighbourhood and Area budgets approved by Council is now under the Head of Inclusive Growth & Partnerships. It is proposed that this is reflected within the Constitution.

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

- 30 For accuracy, it is proposed that a minor amendment is made to paragraph 28 to reflect that licence requirements are set by the Youth Custody Service and Office for Standards in Education, Children's Services and Skills.

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

- 31 Following the removal of the post of Head of Partnerships and Community Engagement, the following is now the responsibility of those in bold and it is proposed the Constitution is updated to reflect this:
- (a) To authorise the expenditure of Neighbourhood and Area budgets approved by the Council in consultation with the relevant Area Action Partnership Board and the appropriate local Member(s). – **Head of Inclusive Growth & Partnerships.**
  - (b) To support and co-ordinate partnership boards including and not limited to community safety/ crime and disorder; health and wellbeing; children, young people and families. – **Head of Corporate Affairs.**

- (c) To plan and deliver requirements for welcoming and supporting refugees and individuals seeking asylum, including capacity within the County as part of the Government Migration Programme. – **Head of Planning and Housing.**

32 It is proposed that a new paragraph is added at the start of the Head of Planning and Housing’s delegations to clarify that the matters relating to land and property are limited to residential Council housing and/ or Gypsy, Roma and Traveller sites. All other Council land and property is the responsibility of the Head of Corporate Property and Land.

33 In respect of the Head of Planning and Housing’s delegations at paragraph 5 *“to determine all forms of planning and other applications and all notifications submitted under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous 3C Durham County Council Constitution May 2024 3C-13 Substances) Act 1990 or under any related principal or secondary legislation, except the following:”* it is proposed that the following amendments in relation to:

- (a) Within paragraph (a) where “those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days that any Member of the Council requests be determined by the Planning Committee...” it is proposed to include the wording “except where that request is subsequently withdrawn” to clarify Members are enabled to withdraw requests for matters to be determined by Committee.
- (b) It is proposed that paragraph (c) is amended to include “on material planning grounds relevant to that application” to clarify that objections must relate to material planning grounds.
- (c) It is proposed that paragraph (c)(i) amended to include “which is not subsequently withdrawn” to clarify that where a request for consideration by Planning Committee is withdrawn, applications can be dealt with under delegated powers.
- (d) It is also proposed that paragraph (e) is amended to include applications which are of strategic significance to the county. This will mean such applications will be referred to planning committee for consideration.

### **Delegations to the Corporate Director of Resources (Table 8)**

34 To ensure that the Council’s insurance arrangements are reflected within the executive functions of the Corporate Director of Resources, it is proposed to amend the bullet point referring to the proper

administration of the Council's financial affairs to include the Council's insurance arrangements.

- 35 Under the specific and non-executive delegations, it is proposed that Council delegates responsibility to authorise the movement on all earmarked reserves within the Council, undertaking regular reviews to re-align reserves in line with corporate priorities.
- 36 It is also proposed to include a delegation for the Head of Corporate Finance and Commercial services to make arrangements for and operate a system of continuous review for all Council earmarked reserves, redirecting reservice as required to align with Corporate Priorities. These changes are required to give effect to the changes to the Finance Procedure Rules referred to later in this report.
- 37 For consistency with the redeployment policy, it is proposed that paragraph 39 is amended to include fixed term employees who have a minimum two-year continuous local government service and casual employees where a regular working pattern exists.
- 38 It is proposed that the wording at paragraph 54 is amended to change "variations" to "to contract awards" for accuracy.
- 39 To reflect the amendments made in Table 3 regarding the Head of Planning and Housing it is proposed that a new paragraph is added to the Head of Corporate Property and Land to clarify that the matters delegated to them relate to land and property held within the Council's General Fund and that matters relating to land and property held within the Housing Revenue Account are delegated to the Head of Planning and Housing.
- 40 The current delegations to the Head of Corporate Property and Land under Table 3 (paras 64 – 84), will be moved to Table 8 (paras 67 – 88) to reflect the realignment of the service.
- 41 It is proposed that reference to the rating assessment and valuation of council owned property in relation to the Head of Corporate Property and Land is removed as this is completed by the Valuation Office Agency.
- 42 It is also proposed that duties arising out of the Business Improvement Districts is removed from the Head of Corporate Property and Land and transferred to Head of Inclusive Growth and Partnerships.
- 43 In respect of Corporate Property and Land, it is also proposed that new paragraphs are added at 87 and 88 which reflect current practice in relation to responding to government and other consultations on Local Authority property matters and exercising the Council's functions in



respect of preparation and development of appropriate strategies and plans for the Council's non-school's portfolio.

## **Council Procedure Rules**

- 44 In relation to Rule 2 and the business conducted at Ordinary meetings, it is proposed that CPR (2) (f) is deleted which relates to presentations on the work of an AAP. This is proposed given there have been no presentations prior to Covid and the AAP's will be replaced with the Local Networks from April 2025.
- 45 During the annual review of the Constitution in 2022, members requested that the wording at Council Procedure Rule (CPR) 10.7 (c) (iii) in relation to time allowed for motions be amended so that before the mover gives their right of reply, the seconder (if they have reserved their right to speak), will then be invited to speak.
- 46 However, when the proposals were presented to Council for approval, this change was not included. It is therefore included within this year's review to correct this oversight.
- 47 When the Council's Annual Budget is under discussion, the Council Procedure Rules provide that the Leader of each political group on the Council may speak for up to five minutes or such longer period as the Chair will allow. The MTFP and Council Tax reports are usually considered together, which has the effect of doubling the time that Movers and Seconders of the motions have to speak. The mover has ten minutes, and the seconder has six minutes. All other speakers have three minutes to speak. Once the MTFP and Council Tax reports have been moved and seconded, the Chair of Corporate Overview and Scrutiny Management Board is invited to provide feedback from Corporate Overview and Scrutiny Management Board's consideration of the reports. This can be challenging to do in relation to the two reports. It is therefore proposed that the Chair of Corporate Overview and Scrutiny Management Board will also have six minutes to speak. It is therefore proposed to amend CPR 12.5 (d) to include "the Chair of Corporate Overview and Scrutiny Management Board may speak for up to six minutes".
- 48 The MTFP and Council Tax reports are moved and seconded by the Leader and Deputy Leader of the Council. Historically, these positions were held by a Group Leader and Deputy Group Leader. In accordance with CPR 12.5, the Group Leader had ten minutes to speak, and the Deputy Leader had six minutes. However, since May 2021 the Leader and Deputy Leader positions have been held by two Group Leaders. The Council Procedure Rules have been applied strictly so that the mover of the two reports has ten minutes to speak and the seconder has six minutes.

- 49 Constitution Working Group have considered the time limits and agreed to propose that an amendment to Rule 12.5(e) should be made to say “When the Council’s annual budget is under discussion, the Leader of each political group on the Council may speak for up to five minutes (even if they are seconding the budget) or such longer period as the Chair shall allow. Taking the two items together would have the effect of doubling this time to ten minutes.

## **Petitions**

- 50 Officers have been asked to review the provisions in relation to the presentation of petitions at Council by members of the public. Currently, petitioners are allowed five minutes to present the petition at the meeting. Only one person may speak to present the petition. There is no provision for any reply from Members and there is no debate on the petition. Council is asked to accept the petition, which is referred to the relevant Service to respond to.
- 51 During recent presentations of petitions, Petitioners have made statements which have questioned the integrity of the Council and/or Officers but the relevant Portfolio Holder has had no opportunity to respond to those statements.
- 52 Constitution Working Group have recommended that the existing rule whereby Petitioners have five minutes to speak remains, but that the Petitioner may only present the title/subject of the petition as it appears on the petition itself (for example, “we the undersigned petition the Council to request that...” ) but still only allowing the Petitioner to speak. The Leader or relevant Cabinet Portfolio Holder *may* respond to the petitioner but such a speech also to be no more than five minutes. This would allow the appropriate Cabinet Member to address any inappropriate comments/allegations by Petitioners, but a Cabinet Member could choose whether or not to speak.

## **Budget and Policy Framework**

- 53 It is proposed that reference to calculations or substitute calculations which the Council is required to make in accordance with section 52I, 52J, 52T or 52U of the Local Government Finance Act 1992 (LGFA) ; and amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with section 52J or 52U of that Act is removed following the repeal of this section within the Act.
- 54 It is also proposed that reference to the legislative sections within the LGFA 1992 in respect of estimates of the amounts to be aggregated in making a calculation by the Executive are updated to ensure they reflect the up-to-date legislative changes.

## Financial Procedure Rules

- 55 A review of the Financial Procedure Rules and Financial Management Standards has been undertaken. No substantial changes have been made other than to:
- (a) end the current Cash Limit Reserve arrangements, whereby some Directorates hold directorate specific cash limit reserves and management in-year over and underspends out of these reserves;
  - (b) Introduce more corporate and centralised oversight and approval of transfers to and from Service Grouping Earmarked Reserves.
- 56 It is proposed to replace individual Service Grouping Cash Limit Reserves with a single corporate Budget Support Reserve. Utilisation of this reserve, and accessing other Service Grouping Earmarked reserves, will require business cases to be developed by Service Groupings that will need to be agreed by the Corporate Director of Resources in consultation with the Corporate Management Team. A copy of the revised Rules and Management Standards are attached at **Appendices 11 and 12.**

## Contract Procedure Rules

- 57 Following the introduction of the Procurement Act 2023, which came into effect in February 2025 and the major changes to Procurement Regulations the Contract Procedure Rules have been revised to ensure that they reflect the up to date legislative regime. A copy of the revised Contract Procedure Rules are attached at **Appendix 13.**

## Officer Employment Rules

- 58 Paragraph 6.2(a) provides that disciplinary action against Chief Officers and against the Data Protection Officer and the Monitoring Officer will be taken in accordance with the County Council's Chief Officer Procedures subject to paragraph 1(e).
- 59 This rule needs amending to reflect that the Monitoring Officer is a Chief Officer and that there is no paragraph 1(e). It is also proposed to amend the rules to clarify that disciplinary action against Chief Officers and the Data Protection Officer are conducted in accordance with the Joint National Council (JNC) for Local Authority Chief Executives National Salary Framework and Conditions of Service Handbook.

## Codes and Protocols

### Code of Conduct for Members

- 60 Following a previous decision of the Standards Committee in June 2023 to amalgamate the Local Assessment Procedure and Local Determination Procedure to the 'Procedure for Member Code of Conduct Complaints', it is proposed that the wording is amended to reflect the change.
- 61 In recent years, the Committee on Standards in Public Life have reviewed the Seven Principles in Public Life (the Nolan Principles) to confirm that they remain relevant and fit for purpose. The Committee amended the Leadership principle to "holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support these principles and challenge poor behaviour wherever it occurs." It is proposed that this amendment is reflected within the Code of Conduct.

### Employee Code of Values and Behaviours

- 62 The Employee Code of Values and Behaviours has been reviewed alongside the Best Value Standards and Corporate Peer Challenge requirements to ensure that it reflects best practice and is fit for purpose.
- 63 It is proposed that the Behaviours set out within the Code are amended to better reflect the Seven Principles for Public Life (the Nolan Principles), which are also set out in the Member Code of Conduct. A copy of the revised Code is attached at **Appendix 16**.
- 64 A recent review of the Council's arrangements for Officers Gifts and Hospitality highlighted that there is potential for ambiguity in relation to what gifts may be authorised for acceptance. Guidance for Managers considering whether to approve offers of gifts and hospitality was published in December 2024. It is also proposed that the Code is amended so that all gifts other than token gifts (such as mugs, stationery, chocolate, etc) must either be rejected or donated to the Chair's charity.

### Protocol on Member Officer Relations

- 65 In preparation for the elections in May 2025 and a new cohort of Members, the Protocol on Member Officer Relations has been reviewed. The review has taken account of feedback received from Officers and Members over the last four years and the proposed amendments seek to clarify the different but complementary roles and

responsibilities of Officers and Members and address queries that have arise. A copy of the Protocol can be found at **Appendix 17**.

## **Member Protocol on interacting with Third Parties**

- 66 As part of the preparations for May 2025, Constitution Working Group has considered a proposal to introduce a Member Protocol on interacting with Third Parties. The Protocol has been suggested in response to a number of queries arising from Members as to how invitations from third parties should be handled.
- 67 The Protocol provides guidance to Members on the different types of meetings/invitations that Members receive, the approach to be taken and where it is appropriate to have Officers present at meetings. The Protocol is not intended to restrict Members interactions with Third Parties but helps protect Members from any suggestion or perception of impropriety. Constitution Working Group considered the Protocol twice and agreed to recommend to Council that it would be adopted as part of the Annual Review of the Constitution. A copy of the Protocol is attached at **Appendix 18**.

## **Officer Guidance on Conflicts of Interest**

- 68 As part of the review of the Council's company governance referred to earlier in the report, it was identified that the Council's constitution should contain clear up-to-date policies and processes to consistently manage actual conflicts or potential conflicts of interest. It is therefore proposed that the inclusion of 'Officer Guidance on Conflicts of Interest' (**Appendix 19**) is included within the Constitution.

## **Background Papers**

None

## **Other useful documents**

None

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## **Appendix 1: Implications**

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### **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 has received a number of reports since February 2024 in relation to proposals covered within this report. The Group were supportive of the proposals presented to Council for approval.

### **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.