

Report to: **Council**
Date: **28 April 2020**
Title: **Amendments to, and adoption of, the Council's Constitution**
Portfolio Area: **Resources and Performance (Cllr Edmonds)**
Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: **28 April 2020**

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RECOMMENDATION

That the Council:

- 1. Notes the changes made under paragraphs 2.1 and 2.2**
- 2. Agrees and formally adopts the amendments to the West Devon Borough Council Constitution (as summarised in paragraph 2.4 of the report and fully outlined at Appendix A)**
- 3. Adopts the Constitution for the forthcoming year with immediate effect <https://www.westdevon.gov.uk/article/3691/Our-Constitution>**

1. Executive summary

1.1 The Council is required to formally adopt its Constitution.

1.2 The Audit Committee is responsible for maintaining an overview of the Council's Constitution and for making any necessary recommendations to the Council. However, this year it has not been possible for the Audit Committee to have the opportunity to review the Constitution and make recommendations.

1.3 This report seeks to ensure that the Constitution is amended to reflect the changes that have either occurred in the Council over the previous year, or

to implement any necessary changes to ensure that it is up to date, lawful and reflects the Council's current practices and priorities.

2. Changes to the Constitution

2.1 Changes to the Constitution are made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes and are effective from the date of approval (unless otherwise agreed by Council). Examples over the past year include:

- Adoption of temporary Procedural Rules for conducting remote meetings
- Amendment to the rules on recorded votes
- Updates to reflect the changes made to the structure and responsibilities in the Senior Leadership Team
- Updates to reflect the changes made to the structure and responsibilities in the Extended Leadership Team
- Consequential amendments to the Definitions used in the Constitution
- The establishment of the Climate Change and Biodiversity and Future IT Platforms Working Groups

2.2 In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. For example, the Monitoring Officer makes changes to the Officer Delegation Scheme where there have been changes to a role's responsibilities, or to update the definitions pages of the Constitution.

2.3 The Constitution is a living document and changes can be made (on recommendation from other Council bodies or the Monitoring Officer) where circumstances or the Council's priorities have changed, where the Council wishes to change the way it carries out its services and functions.

2.4 The following changes to the Constitution are proposed which are shown in yellow highlight in Appendix A:

2.4.1 **Emergency Powers:** The Council's Constitution currently contains powers for decisions to be made in an emergency. Emergency is widely defined in this context as any situation in which the Head of Paid Service believes that failure to act would seriously prejudice the Council's or the public's interests. Such interests will be interpreted widely and include (but are not limited to) the risk of damage.

2.4.2 In the light of the Coronavirus emergency it is recommended that the Emergency powers (included in part 3(a) of the Constitution) are further amended. At present Paragraph 7 of the Principles of Delegation authorises the Head of Paid Service to carry out any function of the Council and take all necessary decisions. In the absence of the Head

of Paid Service emergency powers can be exercised by the Deputy Chief Executive, or in their absence, any one of the Directors.

- 2.4.3 It is recommended that, to cover the event that any of SLT are unable to act, the emergency powers are further delegated to the Monitoring Officer and the Head of Environmental Health.
- 2.4.4 By way of further clarification it is recommended that the following provisions are also added to the Emergency Powers provisions :
- 2.4.4.1 The Head of Paid Service will consult the Leader (and in his/her absence the Deputy Leader) in considering whether an emergency exists;
- 2.4.4.2 The Head of Paid Service will consult (or endeavour to consult) the Leader (and in his/her absence the Deputy Leader) and available members of SLT when exercising the emergency powers. The Head of Paid Service may consult more widely if s/he deems that to be appropriate in the circumstances.
- 2.4.4.3 A record will be kept as to the exercise of emergency powers and the reasons for the exercising these powers
- 2.4.4.4 A report will be made to the next relevant meeting of the Council or appropriate body on the exercise of emergency powers.
- 2.4.5 **Sealing of documents:** Following shared services and the implementation of agile working, the authority to seal the Council's documents was extended from the Council's Monitoring Officer and lawyers, to include senior officers where there were no lawyers available. The Monitoring Officer is currently implementing further measures to regulate the sealing of the Council's documents and recommends that authority should be restricted to the Monitoring Officer and lawyers without specific written permission. Please see paragraphs 12- 14 'Authority to Act' in the Officer Delegation Scheme in Appendix A.
- 2.4.6 **Powers to appoint to Parish/Town Councils:** it is anticipated that there may be greater frequency of more vacancies arising in the parishes throughout the next year which may result in the Parish/Town Councils so that the Parish Council is inquorate and no longer able to act. The Council has the power to make temporary appointments to such councils through the making of an Order, until such time as there is an election or cop-option. This is a matter normally reserved to Council but it is proposed to add a general temporary power to enable the Monitoring Officer (in consultation with the Leader and local ward members) to make such appointments until May 2021. Please see the proposed amendment under Authority to Act in Appendix A highlighted in yellow.
- 2.4.7 **Development Management:** whilst the Council is unable to hold meetings where a physical presence is required, in order to enable as

many planning applications to be determined under Officer Delegation as possible, it is proposed to grant temporary delegated authority to the Head of Development Management (in consultation with the Chairman and Vice Chairman of the Development Management Committee, ward members and the Monitoring Officer) to determine Member and Officer planning applications. These are currently referred to the DM Committee for determination. Members will still have the right to refer such applications for determination at DM Committee if it is deemed there are planning merits for doing so. It is proposed that this temporary amendment will be force until May 2021.

3. Outcomes/outputs

3.1 The Council is required to have an up to date Constitution which reflects the law, its working practices together with best practice to ensure that it delivers efficient services and lawful decisions. The Constitution is a living document and changes are made throughout the year when necessary and it is particularly important to make decision- making as flexible as possible during the current COVID emergency whilst maintaining transparency.

4. Options available and consideration of risk

4.1 The options are limited as the Council has a statutory duty to adopt its Constitution annually and to review that document to ensure that it is fit for purpose and reflects both statutory requirements and the Council's working practices;

4.2 If the Council does not review the Constitution there is a risk that the Council may make unlawful decisions with a consequent risk of challenge;

4.3 Senior Officers have been consulted on the Constitution and any necessary amendments incorporated.

5. Proposed Way Forward

5.1 That the Council approves the proposed amendments to the Constitution attached in Appendix A.

6. Implications

| Implications | Relevant to proposals Y/N | Details and proposed measures to address |
|------------------|---------------------------|---|
| Legal/Governance | Y | The Local Government Act 2000 requires the Council to have (and to maintain) a Constitution. The Monitoring Officer must review the Constitution annually and make recommendations as to its adoption to full Council. Only the Council can approve and adopt the Council's Constitution. |
| Financial | N | There are no financial implications to this report |

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| Risk | Y | There is a risk arising from a failure to review the Constitution and approve the necessary changes because it may lead to unlawful decisions being taken by the Council. By undertaking an annual review of the Constitution the Council mitigates this risk by ensuring that the Constitution is up to date and reflects current practice and law. |
| Climate Change - Carbon / Biodiversity Impact | | No carbon/biodiversity impact arise from the recommendations |
| Comprehensive Impact Assessment Implications | | |
| Equality and Diversity | | None arising from this report |
| Safeguarding | | n/a |
| Community Safety, Crime and Disorder | | n/a |
| Health, Safety and Wellbeing | | n/a |
| Other implications | | n/a |

Supporting Information

Appendices:

A: Amendments to the Constitution

Background Documents:

The Council's Constitution