

Report to: **Council**

Date: **14 July 2022**

Title: **Council Constitution**

Portfolio Area: **Leader of the Council – Cllr Pearce**

Wards Affected: **All**

Urgent Decision: **N** Approval and **Y**
clearance obtained:

Date next steps can be taken: **On approval of the recommendation**

Author: David Fairbairn Role: **Head of Legal Services and
Monitoring Officer**

Contact: **Telephone/email: 01803
861359/david.fairbairn@swdevon.gov.uk**

RECOMMENDATION

It is RECOMMENDED that Council adopts Chapters 4, 5, 6 and 7 as set out in Appendix A to this report as part of its Constitution with the current equivalent provisions being replaced.

1. Executive summary

- 1.1 The Council has a legal duty to publish an up-to-date Constitution reflecting its governance arrangements and which contains its standing orders, its councillor code of conduct, such information as the Secretary of State directs or that the Council considers appropriate. The Constitution should be reviewed annually with any necessary changes being normally considered at the annual council meeting.
- 1.2 At its meeting on 19 May 2022 the Council agreed to amend the Constitution by an entirely new Chapter 2 (Responsibility for Functions) to replace the existing two-part scheme of delegation together with amended Chapter 1 (Introduction) and Chapter 3 (Meeting Procedure Rules). It was also agreed that a further report would be brought to this meeting with proposals for a new Chapter 4 (Access to Information Procedure Rules); Chapter 5 (Other Procedure Rules); and Chapter 6 (Codes and Protocols). These are set out in Appendix A to this report together with the existing Councillor Allowance Scheme, which is subject to a separate review, forming Chapter 7.

2. Background

- 2.1 The Council has agreed improvements its decision-making framework and arrangements to secure greater transparency, accountability, clarity of roles, and efficiency of the democratic process (Min. CM.50/20 refers). The Council has also begun the process of revising its Constitution to reflect that decision (Min CM.36/21 and CM.8/22 refer). The purpose of this report is to complete the revision of the Constitution.

3. Amendments to the Constitution

- 3.1 Appendix A contains:

- (a) Chapter 4 – Access to Information Procedure Rules
- (b) Chapter 5 – Other Procedure Rules
- (c) Chapter 6 – Codes and Protocols
- (d) Chapter 7 – Councillors’ Allowance Scheme
- (e) Appendix 1 - Definitions

- 3.2 As previously explained when the fully reviewed Constitution goes live, it is planned that hyperlinks within the single document will make it easier to navigate around the Constitution. The intended hyperlinks are shown in red and underlined. Hyperlinks will also be used to reference policies and procedures that are referred to, but do not form part of the Constitution. The following paragraphs will seal with each of the new Chapters for the Constitution.

3.3 Chapter 4 – Access to Information Procedure Rules

- (a) These rules explain how members of the public can attend meetings and get copies of the documents being considered at those meetings. They also explain the additional rights of Councillors to information supporting executive decisions.
- (b) As the Constitution has been written for the Council’s decision-making arrangements, the draft Access to Information Procedure Rules more accurately reflect the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, in particular Regulation 5 and the procedures before a private meeting (referred to in the draft rules as “Executive Briefings”), which are absent from the present rules.

3.4 Chapter 5 – Other Procedure Rules

- (a) Budget and Policy Framework Procedure Rules. These rules set out and explain how plans and strategies forming part of

the Budget and Policy Framework, essentially: the budget together with the capital programme and strategy and the Medium Term Financial Plan; and those policies and strategies required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 not to be the sole responsibility of the Executive or required by other legislation to be the responsibility of the Council.

- (b) Financial Procedure Rules. These have been amended so that much of the detailed operation of the Council's financial arrangements appears as the Section 151 Officer's guidance, which although linked to the Financial Procedure Rules, does not form part of them. This reflects the statutory duties of the Section 151 Officer and the distinction between the role of officers and members. It also makes the Rules and therefore the Constitution, less unwieldy and allows them to be updated more easily.

An increase in financial thresholds is proposed. This is to reflect the Council's agreed vision for efficient decision-making and ensuring that decisions are made at the right level. It is also a fact that the thresholds have not been increased for several years. Appendix B shows a comparison between the existing (shown in red) and proposed thresholds.

The Section 151 Officer's guidance reflects a proposal to increase the financial threshold for a Key Decision. For the purposes of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, an executive decision is a key decision if it is likely, among other things, "to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates". The Council's current threshold is £50,000 for revenue expenditure or savings and £100,000 for capital expenditure or savings. As Appendix B shows, the proposal is for the thresholds to increase to £500,000 and £1,000,000 respectively.

The consequence of a decision being a Key Decision is that unless it is an urgent decision and the Chairman of the Overview and Scrutiny Committee agrees that to be so, the Executive's decision may not be implemented until the period allowed by the Overview and Scrutiny Procedure Rules for the call-in of decision has expired.

- (c) Contract Procedure Rules. These are largely technical but have been completely re-written to reflect the changes in the law following the United Kingdom ceasing to be a member of the European Union.

To support the Council's Vision, new thresholds for seeking competitive tenders are proposed. It should be noted that the thresholds are now to be calculated including VAT, which is one of the changes introduced by Central Government since leaving the European Union.

The Rules have as an appendix, a summary of the procedural requirements set out in a table. This is intended to be an easy-reference guide and does not form part of the Rules themselves.

- (d) Officer Employment Procedure Rules. These rules apply to the employment, management of Officers. They reflect the Local Authorities (Standing Orders) (England) Regulations 2001, which require authorities operating executive arrangements to have specific standing orders relating to staff as well as standing orders incorporating provisions relating to disciplinary action against the Head of Paid Service, the Monitoring Officer and the Section 151 Officer.

With regard to taking disciplinary action against those officers, the current procedure rules simply set out the statutory language, which does not fit with the aim of ensuring that the Constitution is user-friendly and written where possible in plain English.

3.5 Chapter 6 – Codes and Protocols

- (a) Councillor Code of Conduct. No changes are proposed or recommended.
- (b) Councillor Complaints Process. It is proposed that the code of conduct is supported by including the Council's process for dealing with complaints as part of the Constitution. This reinforces the Council's duty to promote and maintain standards by enhancing the status of the process.

The process is amended so that it is more streamlined, while at the same time providing for councillors to be consulted by the Monitoring Officer at the assessment stage in most cases. A sub-committee will continue to determine complaints that are investigated fully.

- (c) Councillor and Officer Protocol. The purpose of this protocol is to guide Councillors and Officers so that their respective roles are recognised and the relationship between the two is such that the Council operates smoothly.

The draft is entirely revised, with the result that it is shorter and more focussed, so does not replicate other provisions of the Constitution or policies/strategies.

- (d) Protocol for Councillors and Officers on Planning Procedures. This Protocol provides guidance to both Councillors and Officers when dealing with planning applications, so that the risk of allegations that a decision is biased or not soundly based are minimised.

The draft is entirely revised, both in terms of style and content. Importantly, it will apply to both Councillors and Officers. This is not entirely clear from the present protocol

- 3.6 Chapter 7 – Councillors’ Allowance Scheme. This is subject to a separate review to comply with the Local Authorities (Members' Allowances) (England) Regulations 2003. Until such time as that review has been completed, Chapter 7 will comprise Part 6 of the current Constitution and the existing scheme will continue in effect.

4. Risk, consultation and next steps

- 4.1 The risks of not having an up-to-date, consistent and complete Constitution are that responsibility and accountability for decisions is unclear, decision-making lacks transparency and ultimately decisions are made unlawfully.
- 4.2 Group Leaders, Portfolio Holders and the Chairman and Vice-Chairman of the Overview and Scrutiny Committee have been consulted and presentations were made to all political groups before the Council meeting in May. Since then, the draft documents have been re-circulated to all Members for comment and the opportunity has been provided for Members to ask questions.

5. Conclusions

- 5.1 Local authorities must prepare a constitution, which must be kept updated and made available to the public. This report seeks the approval of a document comprising Chapters 4, 5, 6 and 7 that will complete the process of seeking to improve the clarity, efficiency, and accountability of decision-making that were agreed by the Council previously.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The legal and governance implications are explained throughout the report.
Financial implications to include reference	Y	The revised Constitution proposes increasing the financial thresholds within the Constitution. Appendix B sets out a comparison between the

Implications	Relevant to proposals Y/N	Details and proposed measures to address
to value for money		existing (shown in red text) and proposed thresholds.
Risk	Y	See paragraph 4.1 of the report.
Supporting Corporate Strategy	Y	Having a Constitution that sets out clearly and simply a framework for decision-making that is lawful aligns fully with the aspiration to be a modern organisation delivering quality services as efficiently as possible.
Climate Change - Carbon / Biodiversity Impact	N	There are no climate change or biodiversity implications arising directly from this report.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	There are no equality and diversity implications arising directly from this report.
Safeguarding	N	There are no safeguarding implications arising directly from this report.
Community Safety, Crime and Disorder	N	There are no community safety or crime and disorder implications arising directly from this report.
Health, Safety and Wellbeing	N	There are no health, safety or wellbeing implications arising directly from this report.
Other implications		

Supporting Information

Appendices:

Appendix A – Draft Chapters 4,5,6 and 7 of the Constitution.

Appendix B – Financial thresholds comparison

Background Papers:

There are none.