

WEST NORTHAMPTONSHIRE COUNCIL DEMOCRACY AND STANDARDS COMMITTEE

29 July 2021

Report Title **Constitution Review**

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Contributors/Checkers/Approvers

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Section 151 Officer		
Other Director	The Executive Leadership Team have been consulted on this report.	

List of Appendices

Appendix A – Draft terms of reference of the Constitution Review Task and Finish Group

Appendix B – Constitution review proposal

1. Purpose of Report

1.1 The purpose of this report is to ask the Democracy and Standards Committee to undertake a review of the Constitution.

2. Executive Summary

2.1 This report seeks to establish and commence a Constitution Review process to be conducted through a Task and Finish Group of the Committee.

3. Recommendations

3.1 It is recommended that the Democracy and Standards Committee:

- a) establishes a Constitution Review Task and Finish Group to conduct a review of the Council's Constitution and subsequently make recommendations to the Committee for onward recommendation to Cabinet and Full Council;
- b) appoints Members of the Committee to the Task and Finish Group in accordance with the recommended composition set out at paragraph 6.3;
- c) agrees the draft Terms of Reference of the Constitution Review Task and Finish Group as set out in Appendix A;
- d) endorses the proposal set out in Appendix B and the review principles set out in paragraph 6.5;
- e) approves a consultation programme for the Constitution review as set out at paragraph [6.6];
- f) notes the anticipated timeframe for the review as set out at paragraph 6.8.

4. Reasons for Recommendations

4.1 The reasons for the recommendations are as follows:

- a) A review of the Constitution by the Democracy and Standards Committee was agreed by Full Council on 20th May 2021 and Cabinet on 8th June 2021.
- b) Conducting a review of the Constitution as proposed will help to ensure that it is legally compliant, complete, reflects the character and culture of the authority and supports decision making.

5. Report Background

- 5.1 West Northamptonshire Council was established on 1 April 2021 as a result of local government reorganisation that took place pursuant to the Northamptonshire Structural Changes Order 2021.
- 5.2 A West Northamptonshire Shadow Authority was established in the period leading up to 1 April 2021 to ensure the new unitary authority was ready to operate once established. One of the tasks undertaken by the Shadow Authority was the development of a Constitution for the new authority.
- 5.3 The Shadow Authority established a Member Task and Finish Group to progress the drafting of the Constitution. The draft Constitution was approved by the Shadow Executive on 21 February 2021 and the Shadow Authority gave final approval to the draft Constitution on 10 March 2021.
- 5.4 At the first West Northamptonshire Full Council meeting on 20 May 2021, several amendments to the Constitution were agreed. Council also resolved that: "*A further review of the Constitution be carried out by the Democracy and Standards Committee and referred to a future meeting of Council*". On 8 June 2021 Cabinet made the same resolution and approved those amendments that related to executive matters.

6. Issues and Choices

- 6.1 It was necessary for the Constitution to be developed relatively quickly during the shadow period before the authority came into existence, with a view to putting a core instrument in

place. A further detailed review of this fundamental governance document at this stage will be beneficial for several reasons:

- a) It will enable the Constitution to be improved to reflect the wishes of the Council during the first year of its operation;
- b) It will take account of consultation responses from various stakeholders, e.g. senior officers, elected members, parish councils, third sector organisations, the business community and the general public;
- c) It will also present an opportunity to ensure that the Constitution is entirely compliant with all current legal requirements, that the content is complete and the various components are properly cross-referenced.

6.2 It is therefore recommended that the Committee establish a Constitution Review Task and Finish Group to carry out a review of the Constitution supported by relevant officers. The Task and Finish Group would make recommendations about amendments to the Constitution to the Committee, which would then make onward recommendations to Cabinet and Council. Cabinet and Council would be asked to approve the recommended amendments to the Constitution in respect of those elements that each body has responsibility for, with Full Council being responsible for final formal approval of an amended Constitution.

6.3 It is recommended that the Task and Finish Group be composed of three members of the Committee.

6.4 It is recommended that the Committee approves the draft Terms of Reference of the Constitution Review Task and Finish Group as set out at Appendix A.

6.5 When the Shadow Council was developing the Constitution, the Member Task and Finish Group agreed the following principles, which enabled Members and officers to work together collaboratively to frame a new Constitution:

- Transparency – makes it clear what our rules are
- Accountability – explains clearly who makes which decisions
- Efficiency – keeps the cost of decision making down
- Accessibility – is accessible to all
- Inclusivity – encourages public participation
- Concise – describes what it needs to succinctly.

It is recommended that the Committee approves these same principles for application in this current Constitution review.

6.6 It is recommended that the Committee notes the anticipated timetable for the review set out below. The timeframe shown balances the need to ensure that the Constitution is up to date and fit for purpose as soon as possible against the need to carry out a thorough and detailed review. It is recognised that the timetable may need to change as the review progresses.

July 2021	29 th – Democracy & Standards Committee establishes Task & Finish Group, approves Terms of Reference, endorses constitution review principles, and approves consultation programme.
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August 2021	1 st -31 st - Consultation on revisions to the Constitution in accordance with consultation programme agreed by the Democracy and Standards Committee.
September 2021	1 st -23 th - Task & Finish Group reviews consultation responses and makes recommendations for amendments in conjunction with officers supporting the Task and Finish Group. 30 th - Democracy & Standards Committee reviews findings and confirms recommendations.
October 2021	Executive Leadership Team inputs and reviews consultation responses and proposed amendments to the Constitution.
November 2021	9 th – Cabinet reviews and comments on proposed amendments to the Constitution. 25 th – Democracy & Standards Committee approves report recommending changes to Constitution for approval at full Council.
December 2021	2 nd – Full Council gives formal approval of changes to the Constitution.

6.7 The alternative choices are to not conduct a Constitution review, to commence the review at a later date, or in accordance with a different timetable. These options are not recommended as a need for a review has been identified and it is important to ensure the Constitution is fit for the new Council's purposes and compliant with all current legal requirements as soon as possible.

7. Implications (including financial implications)

7.1 Resources and Financial

- 7.1.1 There are staffing implications in terms of the officer time required to support the Constitution review process. However, these requirements can be met with existing staff resources.
- 7.1.2 There are no financial implications arising directly as a result of the Constitution review process.

7.2 Legal

7.2.1 Under Section 9P of the Local Government Act 2000, every local authority is under a duty to prepare and keep up to date its Constitution. Section 9P requires the Constitution to contain:

- a) a copy of the authority's standing orders for the time being,
- b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
- c) such information as the Secretary of State may direct, and
- d) such other information (if any) as the authority considers appropriate.

7.2.2 Regular review of the Constitution helps to ensure these legal requirements are met.

7.3 Risk

7.3.1 There are no significant risks arising from this report. Conducting a Constitution review process helps to reduce any risks that could arise as a result of the Constitution not properly supporting decision making and delivery of Council services.

7.4 Consultation

7.4.1 There are no consultation implications arising from this report. The report does set out a recommended programme for stakeholder consultation as part of the Constitution Review process.

7.5 Consideration by Overview and Scrutiny

7.5.1 Not applicable to this report.

7.6 Climate Impact

7.6.1 No climate or environmental impacts have been identified as arising from this report.

7.7 Community Impact

7.7.1 There are no direct community impacts arising from this report. However, any specific community impacts that arise from amendments to the Constitution will be considered at the time recommendations for amendments are made.

8. Background Papers

8.1 None.

Democracy and Standards Committee

Constitution Review Task and Finish Group

DRAFT TERMS OF REFERENCE

In accordance with the review principles approved by the Democracy and Standards Committee:

1. To identify, in conjunction with officers, areas of the Constitution that require review and consider proposed amendments.
2. To conduct a consultation exercise on changes to the Constitution with those stakeholders identified in the consultation programme agreed by the Democracy and Standards Committee.
3. To review consultation responses and consider any necessary amendments to the Constitution arising from them.
4. To report to the Democracy and Standards Committee recommending amendments to the Constitution for onward recommendation by the Committee to Cabinet and Council.

CONSTITUTION REVIEW PROPOSAL

Introduction

A council's Constitution should primarily be a locally driven document that reflects the character and culture of the organisation. It should facilitate council business, deliver consistent, efficient and effective decision-making and enable good governance. It should not create overly bureaucratic procedures but promote transparency, efficiency and democratic accountability.

Background

West Northamptonshire Council's Constitution was introduced at short notice during the shadow authority period, with a view to putting a core instrument in place. This was to be followed by a more detailed and thorough review once the new authority was up and running, to ensure the Constitution's legal compliance and completeness.

The Council's Constitution can be found using the following link:

<https://cms.westnorthants.gov.uk/media/79/download>

Legislation

Every local authority is under a duty to prepare and keep up to date its Constitution under [s.9P of the Local Government Act 2000](#).

The Constitution must contain:

- the standing orders/procedure rules
- the members' code of conduct
- such information as the Secretary of State may direct
- such other information (if any) as the authority considers appropriate

Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

Under [s.135 Local Government Act 1972](#), every local authority must make standing orders with respect to the making of contracts for the supply of goods or materials or for the execution of works.

Under sections [8](#) and [20](#) of the Local Government and Housing Act 1989, the Secretary of State may by regulations require local authorities to incorporate in standing orders relating to their staff, meetings and proceedings. Accordingly, the Local Authorities (Standing Orders) Regulations [1993](#), the Local Authorities (Standing Orders) (England) Regulations [2001](#) and the Local Authorities (Standing Orders) (England) (Amendment) Regulations [2014](#) and [2015](#), all require certain standing orders relating to staff and council proceedings to be included in the Constitution.

Furthermore, the Secretary of State issued guidance in the form of the [Local Government Act 2000 \(Constitutions\)\(England\) Direction](#) in December 2000, which required over 80 minimum requirements to be included within Constitutions. West Northamptonshire Council's compliance with these is outlined in the table below:

	Direction Requirement	Relevant part of current Constitution
1.	A summary and explanation of the purpose and content of the Constitution	Part 1.1
2.	A description of the composition of the council, the scheme of ordinary elections for members of the council and their terms of office	Part 1.1
3.	A description of the principal roles and functions of the members of the council under executive arrangements, including the rights and duties of those members	Part 1.1 Part 8.1
4.	The scheme of allowances for members of the authority drawn up in accordance with regulations made under s.18 of the Local Government and Housing Act 1989	Part 8.6 Scheme of Allowances needs to be inserted.
5.	A description of the rights and responsibilities of inhabitants of the authority's area including: <ul style="list-style-type: none"> i. their rights to vote in elections for the return of members of the authority ii. their rights to access to information about the authority's activities iii. their rights of access to meetings of the council, its committees and sub-committees and any joint committees established with any other authority and iv. their rights of access to meetings of the executive and committees of the executive 	Part 5.4
6.	A description of the roles of the authority itself under executive arrangements, including: <ul style="list-style-type: none"> i. the functions which may be exercised only by full Council or which may to some extent be exercised only by full Council (including, in the case of a local authority operating executive arrangements, any plans and strategies which are subject to approval or adoption by full Council by virtue of reg.5 and Sch.4 para.1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000) and ii. any rules governing the conduct and proceedings of meetings of full Council, whether specified in the authority's standing orders or otherwise 	Part 3 Part 5
7.	A description of the roles and functions of the chairman of the council	Part 1.13 Part 3.2 (para.6) Part 8 (Part D) Suggest amalgamate all references into one place.
8.	A description of the functions of the local authority executive which are exercisable by individual members of the executive stating, as respects each function, the name of the member by whom it is exercisable	Part 5 A table of Cabinet members and their portfolios needs to be inserted.

9.	A description of the functions of the local authority executive that are exercisable by the executive collectively or a committee of the executive stating, as respects each function, the membership of the body by who it is exercisable	Part 5 Description needs to be inserted.
10.	A description of those powers of the executive which for the time being are exercisable by an officer, stating the title of the officer by whom each of the powers so specified is exercisable, other than any power exercisable by the officer for a specified period not exceeding six months	Part 9.2 Need to distinguish between Executive and Non-Executive officer delegations. Need to allocate Local Choice Functions. Need to review and update List of Proper Officers.
11.	A description of the arrangements for the operation of overview and scrutiny committees, including: <ul style="list-style-type: none"> i. the terms of reference and membership of those committees and any rules governing the exercise of their functions and ii. any rules governing the conduct and proceedings of meetings of those committees, whether specified in the authority's standing orders or otherwise 	Part 7 Terms of reference and membership of the three Overview & Scrutiny Committees need to be inserted.
12.	A description of the roles of the executive, committees of the executive and members of the executive including: <ul style="list-style-type: none"> i. the roles, functions, rights, responsibilities and duties of members of the executive ii. in the case of a leader and cabinet form of executive, any rules governing the election of the executive leader iii. any rules governing the appointment or dismissal of members of the executive iv. any provisions in the executive arrangements with respect to the quorum, proceedings and location of meetings of the executive v. any provisions in the executive arrangements with respect to the quorum, proceedings and location of meetings of any committees of the executive vi. any provisions in the executive arrangements with respect to the appointment of committees of the executive 	Part 5 Part 8 (Parts B and C)
13.	A description of the roles of any committees or sub-committees appointed by the authority in accordance with s.101 of the Local Government Act 1972, including: <ul style="list-style-type: none"> i. the membership, terms of reference and functions of such committees or sub-committees and ii. any rules governing the conduct and proceedings of meetings of those committees or sub-committees, whether specified in the authority's standing orders or otherwise 	Part 4

14.	A description of those powers of the council which for the time being are exercisable by an officer, stating the title of the officer by whom each of the powers so specified is exercisable, other than any power exercisable by the officer for a specified period not exceeding six months	Part 9.2 Need to distinguish between Executive and Non-Executive officer delegations. Need to allocate Local Choice Functions. Need to review and update List of Proper Officers.
15.	A description of the roles of the local authority's Standards Committee and any parish council sub-committee of the Standards Committee appointed in accordance with ss.53 or 55 of the Act, including: <ul style="list-style-type: none"> i. the membership, terms of reference and functions of that committee or sub-committee and ii. any rules governing the conduct and proceedings of meetings of that committee or sub-committee, whether specified in the authority's standing orders or otherwise 	Part 4.4
16.	A description of the roles of any area committees appointed by the authority to exercise functions in accordance with reg.16A of the Local Government (Committees and Political Groups) Regulations 1990 or, as the case may be, s.18 of the Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, including: <ul style="list-style-type: none"> i. the membership, terms of reference and functions of such committees and ii. any rules governing the conduct and proceedings of meetings of those committees, whether specified in the authority's standing orders or otherwise 	Part 6 Need to include membership of Shared Services Joint Committee, and Police, Crime and Fire Panel.
17.	A description of any joint arrangements made with any other local authorities under s.101(5) of the Local Government Act 1972, including: <ul style="list-style-type: none"> i. the terms of those arrangements ii. the membership, terms of reference and functions of any joint committees established under those arrangements and iii. any rules governing the conduct and proceedings of meetings of those joint committees, whether specified in the authority's standing orders or otherwise 	Part 6 Need to include membership of Shared Services Joint Committee, and Police, Crime and Fire Panel.
18.	A description of any arrangements made with another local authority for the discharge of functions by that other local authority or the executive of that other local authority in accordance with s.101(1)(b) of the Local Government Act 1972 or, as the case may be, Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000	Part 6
19.	A description of the roles of officers of the local authority, including: <ul style="list-style-type: none"> i. the management structure for officers of the authority 	Part 8.4 Part 9.5 and 9.7 Need to incorporate at Part 9.5 (para.3.5d) the

	<ul style="list-style-type: none"> ii. any arrangements made under s.101 of the Local Government Act 1972 or, as the case may be, ss.14, 15 or 16 of the Act for the discharge of functions by officers of the authority iii. the roles and functions of the head of paid service, monitoring officer and chief finance officer iv. the code of conduct for local government employees issued by the Secretary of State in accordance with s.82 of the Act v. any rules governing the recruitment, appointment, dismissal and disciplinary action of officers of the authority vi. any protocol established by the authority in respect of relationships between members and officers 	provisions of the Standing Orders Regulations into the Employment Procedure Rules.
20.	A description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to meetings of the authority, committees and sub- committees, joint committees established with any other local authority, the executive and committees of the executive	Part 2 Part 5.4
21.	A description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to information about the decisions made or to be made by or in respect of local authority's functions and activities	Part 2 Part 5.4
22.	<p>A register stating:</p> <ul style="list-style-type: none"> i. the name and address of every member of the local authority executive for the time being and the division (if any) which they represent and ii. the name of every member of each committee of the local authority's executive for the time being 	Need to insert a link to the councillors and committees section on the website.
23.	<p>A description of the rules and procedures for the management of its financial, contractual and legal affairs, including:</p> <ul style="list-style-type: none"> i. procedures for auditing the local authority; ii. the local authority's financial rules or regulations, whether specified in the authority's standing orders or otherwise; iii. rules, regulations and procedures in respect of contracts and procurement, including authentication of documents, whether specified in the authority's standing orders or otherwise and iv. rules and procedures in respect of legal proceedings brought by and against the local authority 	Part 9.2, 9.6 and 9.7
24.	A description of the register of interests of members and co-opted members of the authority required under s.81 of the Act, together with the procedures for publicising, maintaining and updating that register	Part 8.2 (Section 3) Need to add a description of the register and reference to the website where it is published.
25.	A description of the rules and procedures for review, revision, suspension and interpretation of the authority's Constitution and executive arrangements	Part 3 (para.50) Part 4 (para.4.4.2.a) Part 9.2 (para.12)

26.	The Code of Conduct for Members	Part 8.2
	Legislative Requirement	Relevant part of current Constitution
s.135 LGA 1972	Standing orders with respect to the making of contracts for the supply of goods or materials or for the execution of works	Part 9.6
SO Regs 1993	Standing orders dealing with the appointment of chief officers. Standing orders dealing with the recording of votes and signing of minutes.	Need to incorporate the provisions of the Standing Orders Regulations into the Employment Procedure Rules at Part 9.5. Part 3.2 (para.33) Need to add reference to not signing minutes at extraordinary meetings.
SO Regs 2001	Standing orders dealing with the appointment or dismissal of, or the taking of disciplinary action against, the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer; the objection by the council to budgets, plans or strategies submitted by the Cabinet.	Need to incorporate the provisions of the Standing Orders Regulations into the Employment Procedure Rules at Part 9.5. Part 3.4 (para.2.1)
SO Regs 2014	Standing orders dealing with the recording of votes at budget meetings	Part 3.2 (para.31)
SO Regs 2015	Standing orders dealing with the appointment or dismissal of, or the taking of disciplinary action against, the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer.	Need to incorporate the provisions of the Standing Orders Regulations into the Employment Procedure Rules at Part 9.5.

Procedure

The Democracy and Standards Committee has overall responsibility for reviewing the Constitution and recommending any proposed changes to Cabinet and Full Council for approval.

The Monitoring Officer has delegated authority to make consequential amendments to the Constitution to give effect to a lawful decision; as a direct consequence of a change made outside the council, e.g. a change in legislation; and to correct an error or resolve an inconsistency. All such changes are to be reported to Council.

Proposals

The Democracy and Standards Committee be asked to:

- approve an appropriate programme of consultation with members, officers and external stakeholders, e.g. public, media, businesses, parish council, etc, on what changes (if any) they would like to see made to the Constitution and how it might be improved
- consider recommendations from the Monitoring Officer on amendments to the Constitution to ensure it is lawful, fit for purpose and up-to-date

- put forward recommendations to full Council for approval

Ahead of this, it is recommended that the following issues be considered to ensure the new Constitution is legally compliant:

- Compliance with the Secretary of State's 2000 Direction (see above);
- Clarify what documents should comprise the Policy Framework – the plans listed in the Functions and Responsibilities Regulations have reduced over time, but some of these are still included, e.g. the Annual Library Plan. Do members and officers wish to take additional plans and strategies to Council as well as to the Executive, without such plans having to be approved by Council?
- Insert the Members' Allowances Scheme;
- Insert Councillor Call for Action procedures;
- Insert details of the Community Rights;
- Insert protocol for recording and publishing officer decisions;
- Ensure the Officer Scheme of Delegation is up to date, understandable and all encompassing. Does it distinguish sufficiently between executive and non- executive functions? Does it clarify sufficiently what decisions are reserved to members?
- Insert up to date and comprehensive table of Proper Officer functions;
- Clarify Employment Procedure Rules and insert more detailed description of roles and functions of statutory chief officers;
- Clarify who would exercise or allocate executive functions in the event that a Leader is not elected (and so no cabinet is appointed), i.e. should Executive functions be delegated to the Chief Executive in the absence of a Leader and Deputy?
- Clarify where responsibility and accountability lie for the council's involvement in companies, including reviewing whether officers and members act as company directors.