

Report of:	Monitoring Officer and Director of Legal and Governance Services
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Submitted to:	Constitution and Members Development Committee
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Date:	13 May 2022
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Title:	Update – Council Constitution
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Report for:	Discussion
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Not applicable
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Urgent:	No
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Why:	Not applicable
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Executive summary

1. The Constitution is a live document, which from time to time requires adjustment to reflect how the Council operates. Occasionally amendments are needed to reflect changes in policy and legislation whilst others deal with inconsistencies and presentational issues that have no effect on the agreed procedural rules. Other minor amendments are required to deal with the results of new legislation and do not require a change in Council processes.
2. Article 4 – The Full Council, paragraph 4.2 (a) of the Constitution specifies that only Council will have responsibility for adopting, amending and changing the Constitution, apart from the specific delegations to the Monitoring Officer to make any necessary minor textual changes or further adjustments to comply with any subsequent legislative changes, changes to reflect decisions taken by Council and/or Executive and changes which are of typographical/drafting error nature.

Purpose

1. The Council's Constitution is subject to continual review together with any associated documents e.g. Scheme of Delegation, Procedure Rules and protocols to ensure that decisions taken by the Council are lawful and reflect changes in legislation and Council priorities. This report details proposed amendments to the Constitution.

Background and relevant information

2. A phased review of the Constitution is underway to ensure that the Constitution is fully up to date. Some topics were prioritised last year and since then amendments have been made on various topics such as motions, votes of no confidence, voting on appointments, and the Member Code of Conduct has now been refreshed following approval by Council
3. This report seeks the approval of the proposed changes to the Constitution as detailed below and notes that the Monitoring Officer, under delegated powers has authorisation to amend the Constitution in the circumstances outlined in paragraph 3 above.
4. The changes to the Constitution generally fall within three broad areas, which can be described as follows:-
 - a. Alterations made as a result of decisions of either the Council or the Executive.
 - b. Alterations made under the delegated powers given to the Monitoring Officer to deal with changes required as a result of legislative changes.
 - c. Alterations to improve the working of the Council or, to attempt to resolve ambiguities or amend typographical or drafting errors.

The following amendments to the Council Procedure Rules are proposed under paragraph (c) above.

Standards Committee – Changes to the Terms of Reference

Terms of Reference - Standards Committee

Restrictions: Cannot include the Elected Mayor or Executive Leader and may not be chaired by an Executive Member

1. To make reports or recommendations to the Council in relation to:-
 - the approval by the Council of local codes of conduct for Members and officers, codes of practice, standing orders and protocols, taking account of national models and guidance or case tribunals.
 - the implementation of local codes of conduct etc, and the dissemination throughout the Authority of information and guidance on their operation.
 - consideration of any reports relating to the conduct of Members or officers which may be referred to it by the Council's Chair, Monitoring Officer or by the Chief Finance Officer under section 114 of the Local Government Finance Act 1988 in consultation with the Monitoring Officer, including

issues relating to Members' and officers' interests and the maintenance and management of any relevant registers of interests.

- consideration of relevant reports referred by the Monitoring Officer and Chief Finance Officer and make recommendations thereon to the Council as necessary.
2. Grant dispensations to Councillors, Co-opted Members and Parish Council Members from the requirements relating to declarations of interest as set out in Section 32 of the Localism Act 2011. **The Monitoring Officer may grant a dispensation where the matter is urgent and report it to the next available Standards Committee.**
 3. The determination, following an investigation, of allegations of breaches of Members' Codes of Conduct within such statutory provisions or guidance as may exist **and the imposing of any relevant sanctions.**
 4. Discharge of all of the above functions required by the Localism Act 2011 in relation to Parish Councils.

Revision of the Access to Information Procedure Rules

5. It is some years since the Access to Information Procedure Rules have been revised. A copy of the suggested revised version of the Access to Information Procedure Rules is attached at Appendix 1.

Substitutions

6. Following a request from the Chair of the Corporate Affairs and Audit Committee the committee are asked to consider a proposed amendment to the required notification period from 24 hours before the meeting as it currently appears in the Constitution to 3 hours before the meeting. This is a locally determined matter and therefore within the purview of the Council to amend. The Committee are therefore invited to discuss the proposal before making recommendations to Council

Background and relevant information

7. Concerns were raised about the timescale the Council has currently identified within the Constitution for political groups / members to notify the Monitoring Officer of a members substitution. It was felt that the rigidity of the 24 hour notification period currently set out in the Council's standing orders and the late notification of apologies from committee members could have a detrimental impact and result in meetings being inquorate. This could also result in reputational damage to the local authority as well as result in a great deal of officer/partner time and resources being wasted.
8. Committee Membership substitution is a process which has been adopted nationally and it allows members more flexibility in relation to attending meetings and helps underpin the statutory requirement of political proportionality in meetings.
9. A substitute must be identified by name as replacing a primary member before a meeting takes place.

10. Substitute members have all the powers and duties of any primary ordinary member of the committee but cannot exercise any special powers or duties exercisable by the person they are substituting (e.g. they cannot act as Chair of a committee if they are substituting for a member who is the Chair).
11. The law does not permit the use of a formal substitution process for the Executive.
12. Generally there two ways for approving substitutions to committee membership;
 - i. Delegation to an officer to approve substitution on the instructions of the groups concerned on an 'as and when' basis. Middlesbrough has adopted this process and has a locally agreed notification period. The disadvantages of this method is that it encourages last-minute changes, with Members being appointed who have no prior knowledge of the work of the Committee.
 - ii. Council appoints substitutes. When primary members are appointed to committees (usually at the annual meeting of the council), a small number of additional councillors can be appointed in addition to act as substitute member. This method has the advantage of certainty in that the substitute membership is well publicised in advance so that the members concerned can build up some knowledge and expertise in the subject area of their particular committee and attend relevant training, but lacks the flexibility of the above.
13. Middlesbrough has adopted a notification period of 24 hours which was set in line with professional guidance (Knowles on Local Authority Meetings) to allow time for substitute members to receive and digest the content of the agenda and reports (some of which can be complex), formulate questions and to undertake any necessary training.
14. However over the last 3 months we have received a number of short notice apologies (either the day before the meeting or the day of the meeting), which has had the potential to impact on the quorum of a number of committee meetings. It is not clear as to whether attendance is being affected by the pandemic or members personal circumstances as reasons for none attendance are not always provided in the notification.
15. Where a committee member is not able to attend, the onus is on that member to arrange a substitute or to seek assistance from a Political Assistant, where appropriate. However, again, it is not clear why a substitute has not been nominated as this information is not always provided, but may be impacted due to the lack of availability of other group members or the 24 hour required notice period.
16. Therefore members are asked to consider the issues raised and discuss the possible options which may include balancing the quorum of the meeting, which is legally required for the meeting to take place, and the equal importance of good governance and sound decision making by ensuring members have enough time to

receive, read and digest all the reports on the agenda and receive any necessary training prior to the meeting taking place. This enables substitutes to fully participate effectively in the meeting.

17. Other options may include providing different timescales for the submission of apologies for different types of meetings e.g. non-decision making meetings/ regulatory meetings/meetings where mandatory training is required.
18. Members also have a duty to ensure that any decision making is in line with the Council's corporate governance requirements and decision making principles and ensure that the public can be confident that decisions are sound and have received the appropriate consideration of all members.

Principles of decision making

19. All decisions of the Council will be made in accordance with the following principles:
 - a) proportionality (i.e. the action must be proportionate to the desired outcome);
 - b) due consultation and the taking of professional advice from officers;
 - c) respect for human rights (see below for further details);
 - d) a presumption in favour of openness;
 - e) clarity of aims and desired outcomes;
 - f) a need to explain what options were considered and giving the reasons for the decision.
20. This is especially critical for those in decision making committees, where decision could be subject to challenge through an appeal mechanism or judicial review.
21. If members decided to change the rules regarding notice of substitutions, the Council Procedure Rules would need to be amended to reflect the changes.

What decision(s) are being recommended?

22. That Council approve the following:
 - (a) The proposed changes to the Constitution as detailed in the report and notes that the Monitoring Officer will, under delegated powers, amend the Constitution accordingly.
 - (b) That the Monitoring Officer, under delegated powers be authorised to amend the Constitution and make any necessary minor textual changes or further adjustments to comply with any subsequent legislative changes, changes to reflect decisions taken by Council and/or Executive and changes which are of typographical/drafting error nature.

Rationale for the recommended decision(s)

23. The Constitution is a live document and requires constant updating to ensure that it is compliant/compatible with appropriate legislation or standard procedures.

Other potential decision(s) and why these have not been recommended

24. Do nothing. This would result in the Constitution becoming out of date and not compliant/compatible with appropriate legislation or standard procedures.

Impact(s) of the recommended decision(s)

Legal

25. *As per Section 37(1) of the Local Government Act 2000, a local authority operating executive arrangements or alternative arrangements must prepare and keep up to date a document (referred to in the section as their constitution) which contains prescribed information.*

The changes suggested within this report are therefore in compliance with the above by way of keeping the constitution up to date.

Strategic priorities and risks

26. The relevant risks this decision would influence are cited below, with an explanation as to why they are relevant and how it would affect each risk.

Risk No	Risk Description	Impact
O8-055	If the Council doesn't respond effectively and efficiently to legislative changes it could be in breach of statutory duties in relation to service delivery and fail to make the most of opportunities.	The Council are obliged to comply with any new legislation or guidance. The Constitution is a live document which is updated continually to reflect any changes in legislation or guidance. The continual update of the Constitution has a positive impact on the Council fulfilling its statutory duties.

Human Rights, Equality and Data Protection

27. The subject of this report is not a policy, strategy, function or service that is new or being revised. It is considered that an equality impact assessment is not required.

Financial

28. There are no financial implications or impact on any budgets or the Medium Term Financial Plan (MTFP) arising from the content of this report.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Update the constitution	Monitoring Officer	31 May 2022

Appendices

1	Access to the Information Procedure Rules
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Background papers

Body	Report title	Date

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