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| Report of: | Director of Legal and Governance Services and Monitoring Officer - Charlotte Benjamin |
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| Submitted to: | Council – 7 July 2021 |
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| Subject | Update - Council Constitution |
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Summary

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| Proposed decision(s) |
| To consider proposals to update the Constitution, included at Paragraph 23 of the report - as endorsed by the Constitution and Members Development Committee on 26 February 2021 |

| Report for: | Key decision: | Confidential: | Can be called-in: |
|--------------------|----------------------|----------------------|--------------------------|
| Decision | N/A | No | No |

| Contribution to delivery of the 2020-23 Strategic Plan | | |
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| People | Place | Business |
| Not applicable | Not applicable | Ensure decision making practices remain relevant and / or can improve openness and transparency. |

| Ward(s) affected |
|-------------------------|
| Not applicable |

What is the purpose of this report?

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.

Why does this report require a Member decision?

2. 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.

3. A phased review of the Constitution is underway to ensure that the Constitution is fully up to date. Some topics have been prioritised for review and the committee will be asked to consider proposals before these are considered for approval by full Council.
4. The changes to the Constitution 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.
5. Detailed below are the proposed amendments for consideration by the Council.

Proposed alterations to be made as a result of decisions of either the Council or the Executive.

Motions of No Confidence

6. Council recommended that the item in relation to motions of no confidence (20/10/2020) should be referred back to the committee for further consideration. The Constitution is currently silent on motions of no confidence it is therefore it is proposed to add a new section to the Constitution (see Appendix 1).

Proposed alterations to be made under the delegated powers given to the Monitoring Officer to deal with changes required as a result of legislative changes

7. There were no proposed amendments to be made under delegated powers given to the Monitoring Officer to deal with changes required as a result of legislative changes

Proposed alterations to be made to improve the working of the Council or, to attempt to resolve ambiguities or amend typographical or drafting errors.

8. The following ambiguity with regard to voting on appointments was clarified by the Monitoring Officer:

Voting on appointments at committees

9. Council recommended that the Constitution and Members' Development Committee consider the legal position as to whether Executive members could participate in voting at the Council AGM with regard to Scrutiny/Audit Committee appointments and that a report on the outcome be brought back to Full Council

10. Appointments of Chairs and places on committees are generally made at the Annual Meeting of the Council (see Council Procedure rules excerpt **Appendix 2**).
11. In order to clarify who can take part in voting on the above appointment 'Knowles on Local Authority Meetings - a manual of law and practice', identifies;

Elements of a lawful decision;

1.38 To be lawful a decision of a local authority, if taken by the **full council** or by a committee, must:

- comply with the cardinal principle of being reached by the required **majority of Councillors present and voting** at a properly constituted meeting;;

- be one that the council is empowered or obliged to take, otherwise it is *ultra vires*;

- not offend against Wednesbury reasonableness, which in itself has several facets to consider, including that of bias or predetermination.

- if taken under delegated power, it must furthermore come within the scope of that power.

A decision cannot ordinarily be impugned because of the lack of qualification of a councillor. Ordinarily, too, a decision cannot be challenged because of the motive of a councillor or councillors who voted in favour of the proposition or just because a councillor has not directed their mind in the meeting itself to the arguments for and against or to other relevant considerations.

1.39 There is a general principle governing the manner in which an authority shall reach a decision. This is that, save where other prescriptions apply in particular circumstances:

'... all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.'

1.40 This means that every decision that falls to be taken by a local authority (unless it is one that an officer or individual member, including an elected mayor, has been empowered to make) can lawfully be reached only by the full council at a properly constituted council meeting or by a committee or sub-committee acting under delegated powers, and then only upon the affirmative vote of a majority of the members present and actually voting.

Therefore, an authority of 100 members may properly be committed to a course of action at a council meeting at which no more than the prescribed quorum is present (say 25 council members, which represents the quorum in the case of a principal council of that membership), of whom only three trouble to put up their hand in favour when a vote is taken and two vote against: or –a more extreme example – if one member votes in favour and everyone else abstains.

12. Having contacted other Tees Valley local authorities, all of the authorities that were contacted advised that the appointments to Chairs and positions on Committees were determined by the whole of the membership of the Council.
13. The guidance contained in 'Knowles on Local Authority Meetings – a manual of law and practice' makes it clear that a decision made by Full Council, should be reached by the required majority of councillors present and voting at a properly constituted meeting.
14. The Local Government Act 1972, s.2B provides that the Mayor is to be treated as a member of the council when voting at meetings, and therefore the guidance above also applies to the elected Mayor.
15. However, the Mayor is not recognised as a Councillor for the allocation of Political Balance and therefore can only be allocated seats on committees as an ex officio member (a member of a body who holds the role as a result of their status or another position that they hold).
16. The guidance thereby indicates that the Executive can take part in voting on all Committee appointments including in respect of Scrutiny Chairs.

Motions

17. It is felt from an operational perspective that improvements could be made to some processes in relation to motions that may help Members' and Service Directors understand the possible impact of motions before submitting them and identify who will be responsible for ensuring actions can be tracked and monitored.
18. Propose that the time for submitting motions with notice to be extended to 9 clear working days. Motions will need to be submitted by 5pm prior to the 9th clear working day. This will allow time for discussions / consultation with the Monitoring Officer / Deputy Monitoring Officer / 151 Officer or Service Director where appropriate and allow time for alterations where required.
19. It is proposed that when submitting a Motion, a Motions Form (**Appendix 3**) be submitted to ensure that all the necessary information is included which will enable appropriate consideration by the Chair of the Council and the Monitoring Officer. The form will also identify who is responsible for any actions arising from the agreement of the Motion and will facilitate Motions to be tracked to ensure that any actions are carried out and within the required timescale.
20. Any amendments to ordinary Motions must be submitted 2 working days prior to the meeting to allow time for discussions/consultation with the Monitoring Officer / Deputy Monitoring Officer/ 151 officer or Service Director where appropriate, to ascertain if the amendment is lawful or valid. This will allow the Chair to read any proposed amendments out at the meeting, therefore providing members with clarity with regard to the amendment to the Motion and clarity on what they are voting on.
21. Any amendment must be relevant to the Motion and should not substantially alter the Motion in such a way as to negate the Motion or to introduce a new proposal.

Motions to amend the Council Budget

22. In terms of proposed amendments to the Council Budget, it was proposed that any amendment must be submitted in writing, at least 3 working days prior to the meeting to allow time for the Section 151 Officer to review the amendment to determine whether the proposal is lawful and to enable him to determine what effect the amendment would have on the budget that has been proposed.

What decision(s) are being asked for?

23. That the Council approve the following proposals to update the Constitution :
- I. Motions of No confidence (Appendix A) be added to the Constitution
 - II. Note that all Members of Council to vote on appointment of Committee Chairs and members
 - III. Change the timescale for submitting a Motion from 7 working days to 9 working days for Notice of Motions
 - IV. Agree the proposals to introduce the use a Notice of Motion form to gather additional information
 - V. Agree the proposal to submit amendments to ordinary motions, in writing, 2 working days before the Council meeting.
 - VI. Agree the proposal to submit amendments to the Council Budget, in writing, 3 working days before the Council meeting.

Other potential decisions and why these have not been recommended

24. Not applicable

Impact(s) of recommended decision(s)

Legal

25. No impact.

Financial

26. No impact.

Policy Framework

27. Not applicable. The report does not propose an amendment to the policy framework.

Equality and Diversity

28. Not applicable.

Risk

29. If the Council does not have adequate governance processes in place to ensure that it complies with all relevant legislation, it could result in a breach in governance

requirements leading to (depending on the seriousness of the breach) fines, reputational damage, government intervention alongside failure to deliver organisational priorities.

Actions to be taken to implement the decision(s)

30. Monitoring Officer to make any changes to the Constitution.

Background Papers

Knowles on Local Authority Meetings (8th Edition)
Council Minutes – 14 October 2020

MOTIONS OF NO CONFIDENCE

1. Motions of no confidence in a Chair of a committee /scrutiny panel may be moved in a committee meeting as an interim measure. However, the Council appoint Committee Chairs, therefore a confidence motion relating to a Chair of Committee must be approved by Full Council as a non-delegated item, with a recommendation that a new Chair be appointed by Council.
2. A confidence motion may only be brought following consultation with the Monitoring Officer / Deputy Monitoring Officer.

Raising a No Confidence Motion

Committee and Scrutiny Chairs

3. Any member of a committee, Overview and Scrutiny Board or any Scrutiny Panel shall be entitled to give notice to the Monitoring Officer or the Head of Democratic Services that they wish an item relevant to the Committee's function to be included on the agenda for the next available meeting (7 clear working days' notice prior to the appropriate committee). The request must contain detailed reason for the motion.
4. The Monitoring Officer will ensure it is included on the next available agenda as the first item for consideration. Where it is not feasible to give the required notice, then a Member of that Committee after consultation with the Monitoring Officer may move that an urgent agenda item is considered at the meeting. Under the law, only the Chair can admit urgent items of business - failure of the Chair to admit a confidence motion in respect of him/herself may be submitted as a Notice of Motion to Council.
5. For consideration of such a motion, the Chair shall cease to be Chair of the Committee for that item and shall be an Ordinary Member of the Committee. The Monitoring Officer, or their representative, will act as Chair of the Committee during consideration of the motion.
6. Where a Member wishes to bring a confidence motion against the Chair of a Committee of which they are **not a Member**, it should be brought as a notice of motion to the Council under the Council's Procedure Rules.
7. The motion, after debate, shall be carried if it is agreed by a simple majority of the **Members** present and voting. The Chair shall immediately stand down and the remainder of the meeting shall be chaired by the Vice-Chair or, in his/her absence, or if he/she was acting as the Chair and the subject of the vote, by a Member elected for that purpose by the meeting.

8. Following a successful vote of no confidence in the Chair, he/she shall not officiate at any subsequent meeting of the Committee prior to the next meeting of the Full Council.
9. If the Council does not confirm the vote by a simple majority of the Members present and voting, the Member remains as Chair of the Committee.
10. Only 1 vote of no confidence can be considered in any 12 month rolling period.

Mayor and Executive

11. A confidence motion against an Executive Member may be brought at Council under the Council's Procedure Rules but the Executive Member can only be removed by the elected Mayor
12. A confidence motion against the Elected Mayor may be brought at Council under the Council's Procedure Rules, however by law the Mayor remains in office until resignation, disqualification or the appointment of a successor, so the Mayor cannot be dismissed by Council by a vote of no confidence.
13. Only 1 vote of no confidence can be considered in any 12 month rolling period.

Chair of the Council

1. A confidence motion against the Chair of Council may be brought at Council under the Council's Procedure Rules, however under the Local Government Act 1972 the Chair/ Vice Chair remains in office until resignation, disqualification or the appointment of a successor, so the Chair cannot be removed from office by Council by a vote of no confidence.
2. Only 1 vote of no confidence can be considered in any 12 month rolling period.

No Confidence Motions at Council

3. Members must give notice to the Monitoring Officer or the Head of Democratic Services that they wish put a motion to Full Council (9 clear working days' notice prior to of the appropriate Council Meeting).
4. The Council shall consider whether to confirm the vote of no confidence. If by a simple majority of the **Members** present and voting, they decide to confirm the vote, the office of Chair of the relevant Committee shall be declared vacant and the Council shall elect a new Chair.

Procedure

Where motions of confidence are moved, the rules of debate will not strictly be applied and in accordance with the rules of natural justice, the defendant (Chair or Mayor, Executive Member) will have the right to speak last, though the mover will have the right to respond.

APPENDIX 2

Voting on appointments at Committees - Council Procedure rules excerpt

CHAIRING

1. The Council will appoint chairs and vice-chairs of the Council and all committees and scrutiny panels at its Annual Meeting.
2. Where there is a vacancy for Chair, the Vice Chair will act as Chair until the council fills the vacancy *at the next general full council meeting*.
3. Written notice of the resignation of a Chair or Vice Chair will be effective on receipt by the Monitoring Officer.
4. In the absence of the Chair and Vice-chair at a meeting, the committee will appoint a chair for that meeting or part of that meeting, as appropriate. The person presiding at the meeting may exercise any power or duty of the Chair.
5. Chairs and (where required) Vice Chair of sub-committees of main committee/s will be appointed by the parent committee.
6. The Council may at any time remove a Chair or Vice Chair of a committee.
7. A joint meeting should appoint a member to chair the meeting?
8. No member of the Executive will chair any meeting of the Council, Overview and Scrutiny Board; a Scrutiny Panel or the Corporate Affairs and Audit Committee.

APPENDIX 3

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| DATE MOTION SUBMITTED | |
| PROPOSER | |
| SECONDER | |
| DATE OF COUNCIL MEETING | |
| RESPONSIBLE EXECUTIVE MEMBER | |
| SUBJECT OF MOTION | |
| | |
| ACTION REQUIRED TO IMPLEMENT THE MOTION | |
| IS THERE ANY FINANCIAL/LLEGAL/SERVICE IMPACT (CHECK WITH MO/S151/SERVICE DIRECTOR BEFORE SUBMITTING THE MOTION) | |
| PERSON/PEOPLE RESPONSIBLE FOR ACTION | |
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| | |
| DEADLINE DATE FOR ACTION | |