

Bolsover District Council

Meeting of Standards Committee on 19th June 2023

Review of the Council's Constitution

Report of the Assistant Director of Governance and Monitoring Officer

Classification	This report is public
Report By	Jim Fieldsend Assistant Director of Governance and Monitoring Officer 01246 242472 Jim.fieldsend@bolsover.gov.uk
Contact Officer	Amy Bryan Governance and Civic Manager Amy.bryan@bolsover.gov.uk 01246 242529

PURPOSE/SUMMARY OF REPORT

To consider the list of areas for review within the Council's Constitution for consideration by the Standards Committee prior to submission as part of the Annual Review of the Constitution to Council for adoption.

REPORT DETAILS

1. Background

- 1.1 The Constitution is the Council's 'rulebook'. It sets out how the Council operates and how it makes decisions. Council approved its latest version of the Constitution at the Annual Council meeting in June 2021.
- 1.2 One of the functions of the Standards Committee is to undertake an annual review of the Council's Constitution to ensure it is up to date and in line with legislation and current circumstances.

2. Details of Proposal or Information

- 2.1 The table below sets out how these areas of review will be considered over the municipal year and where the matters need to be considered by other Committees for consultation, these have been identified.

Area for Review	Lead Officer	Dates for Consideration
Minor wording changes or updating of job titles (housekeeping)	Governance Officers	Once final draft version produced
Junior Executive Member	Monitoring Officer	June 2023
Access to Information	Monitoring Officer	June 2023
Scrutiny Procedure Rules	Scrutiny & Elections Officer	June 2023
Executive/Scrutiny Protocol	Scrutiny & Elections Officer	June 2023
Councillor Call for Action	Scrutiny & Elections Officer	June 2023
Members Roles and Responsibilities	Scrutiny & Elections Officer/Governance and Civic Manager	June 2023
Virement	Monitoring Officer	June 2023

Junior Executive Members

- 2.2 The Leader of the Council has proposed the introduction of the role of Junior Executive Member. The purpose of this change is to provide each of the Executive Members with an assistant who will help in delivering the work within their portfolios. There are five Executive Members in addition to the Leader and Deputy Leader and therefore five Junior Executive Members. In addition it will provide the Junior Members with valuable experience of the work of the Executive which will potentially assist with succession planning. This role is not unique, and many local authorities already provide a position where Members provide support to Executive Members. It should also be noted that the Junior Executive Members will not actually form part of the Executive and will not have any executive decision making powers. It is also proposed that they will retain a position on one of the Scrutiny Committees however will not be part of scrutiny involving the portfolio which they are assisting.
- 2.3 Article 7 of Part 2 of the Constitution which set out detail of the Executive will need to be amended to include details of the Junior Executive Members A revised version of the Article 7 is attached at Appendix 1.
- 2.4 Access to Information Rules
- 2.5 The Access to Information Rules within the Constitution set out how the public can attend Council meetings, committees and the Executive and how they can access agendas, reports and minutes of those meetings. Generally the public have the right to attend meetings and see background papers, however there are occasions when the public can be excluded from meetings and this is also set out in the Rules.
- 2.6 Most local authorities' constitutions are based on a model form of constitution including a model form of the Access to Information Rules. These follow the rules as set out in section 100A-H and Schedule 12A of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information)(England) Regulation s 2012. Bolsover's Rules generally are in line with the model form however there are a number of omissions and points of clarification that need to be addressed. Following a

review of Rules in comparison to other local authorities rules a number of changes are suggested.

- 2.7 Of specific note are the changes to the wording of Rule 4.2.12. Under the current wording the responsibility for deciding whether a report should be exempt sits with the report writer in consultation with the Monitoring Officer. This is inconsistent with all other constitutions looked at as part of this review who places the responsibility with a senior officer such as Monitoring Officer, Chief Executive Officer. It is also inconsistent with the Officer Delegation scheme which has designated the Monitoring Officer as the Proper Officer for determining such matters.
- 2.8 A revised version of the Access to Information Rules is attached at Appendix 2.

Scrutiny Procedure Rules

- 2.9 Following the separation of the Audit and Scrutiny functions, officers have taken the opportunity to complete a full review of the Scrutiny Procedure Rules to ensure all elements that would be included in the model form of constitution were present. The review highlighted that some sections of the Rules required amendment to ensure the constitution fully reflected revisions to legislation and local operating procedures. A combination of clerical amends and legislation updates have been completed. As a result of this there is also the addition of the Executive/Scrutiny Protocol, and the revision and incorporation of the Councillor Call for Action procedure discussed subsequently.
- 2.10 A revised version of the Scrutiny Procedure Rules is attached at Appendix 3.

Councillor Call for Action (CCfA)

- 2.11 As part of the current review of the Scrutiny elements of the Constitution, officers found that reference to our CcfA procedure had been omitted, which is inconsistent with other constitutions assessed as part of the review. It has been noted that the original CcfA procedure adopted in 2009 has not been incorporated into Part 4.5 of the Constitution as previously approved. Furthermore, due to legislation amendments as a result of the Localism Act 2011, the original CCfA required minor amendments. The new section added at 4.5.20 rectifies this and updates Part 4.5 as originally intended.
- 2.12 A revised Councillor Call for Action is now included within Appendix 3 attached.

Executive/Scrutiny Protocol

- 2.13 Within the revised *Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities* released in May 2019 at paragraph 11(d) and Annex 1, guidance is given on the creation of an Executive/Scrutiny Protocol. The creation of such a Protocol has been discussed previously with Scrutiny Chairs and Executive but due to the impact of the pandemic and other project demands this has not been implemented to date. As part of the current wider review of the sections related to the Council's Scrutiny functions within the Constitution, the Protocol attached at Appendix 3 seeks to meet this element of the guidance. The aim of the Protocol is to outline practical expectations of the relationship

between Scrutiny Members and the Executive. The Protocol formalises our existing working arrangements and provides additional clarity on the working relationship that isn't covered by the standard Scrutiny Procedure Rules at Part 4.5.

- 2.14 A proposed Executive/Scrutiny Protocol for insertion into the constitution at 4.5.21 within Part 4.5 is attached at Appendix 4.

Members Roles and Responsibilities

- 2.15 As part of the current review of the Scrutiny elements of the Constitution, officers noted that there was no clarification of the role of a Scrutiny Member. This detail has also been requested by Councillors prior to the election in May to enable them to clarify role expectations and responsibilities for incoming Councillors. The amendments to Part 5.6 aim to ensure that all possible roles and responsibilities are now addressed.
- 2.16 In addition the roles and responsibilities of the Vice-Chair of the Council has been added for clarity purposes
- 2.17 A revised Members Roles and Responsibilities section showing the addition of the role of Scrutiny Member and Vice-Chair of the Council is attached at Appendix 5. This also shows the proposed roles and responsibilities of the Junior Executive Member as referred to above

Virement

- 2.18 Virement is where excess money from one budget area is transferred to another budget where there is a shortfall. This is dealt with in part 4.3 of the Constitution (Budget and Policy Framework Rules) and part 4.7.2(7) (Financial Regulations). There is a slight discrepancy between the two parts in relation to who can authorise a virement, part 4.3 says it is Executive and budget holders and part 4.7.2(7) says it is "Strategic Alliance Management Team (SAMT) and Heads of Service". It is the intention that senior officers are able to authorise virements however the terms "SAMT" and "Heads of Service" and need to be replaced with the "Members of Senior Leadership Team" or "SLT". Attached at Appendix 6 are the proposed changes to the Part 4.3. and Part 4.7.2 to reflect the need to align the two sections.

3. Reasons for Recommendation

- 3.1 To ensure the Council has in place a fit for purpose Constitution which complies with the law.

4 Alternative Options and Reasons for Rejection

- 4.1 Members may consider alternative options to any proposals put forward, where legally permitted.

RECOMMENDATION(S)

1. That the Committee give consideration to the proposals for review and support the submission of the proposals to Council as part of the Constitution Review at a future meeting.

IMPLICATIONS:

Finance and Risk: Yes No

Details:

Failure to ensure the Constitution meets legal requirements can leave the Council open to challenge, as does failure to comply with the provisions of the Constitution. It is therefore essential that the Constitution is regularly reviewed and given robust oversight.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

The Council is required under the Localism Act 2011 to prepare and keep up-to-date a constitution that contains its standing orders, code of conduct, such other information that the Secretary of State may direct and such other information that the authority considers appropriate.

On behalf of the Solicitor to the Council

Environment: Yes No

Please identify (if applicable) how this proposal/report will help the Authority meet its carbon neutral target or enhance the environment.

Details:

None

Staffing: Yes No

Details:

There are no human resources implications arising from the proposals within this report. Some areas for review may impact on staff. These implications will be addressed in relation to the specific areas for review.

On behalf of the Head of Paid Service

DECISION INFORMATION

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? <i>(Only Key Decisions are subject to Call-In)</i></p>	N/A

<p>District Wards Significantly Affected</p>	None
<p>Consultation: Leader / Deputy Leader <input type="checkbox"/> Executive <input type="checkbox"/> SLT <input checked="" type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input checked="" type="checkbox"/></p>	<p>Details: Relevant officers are consulted at various stages of the Constitution Review</p>

<p>Links to Council Ambition: Customers, Economy and Environment.</p>

DOCUMENT INFORMATION

Appendix No	Title
1	Revised Article 7
2	Revised Part 4.2 Access to Information Rules
3	Revised Part 4.5 Scrutiny Procedure Rules
4	Proposed Executive/Scrutiny Protocol
5	Revised Part 5.6 Members Roles and Responsibilities
6	Revised changes to the Virement rules

<p>Background Papers</p>
<p><i>(These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Executive you must provide copies of the background papers).</i></p>
<p>None</p>