

Bolsover District Council

Meeting of Council on 2nd August 2023

Review of the Constitution

Classification	This report is Public
Report By	Jim Fieldsend, Director of Governance & Monitoring Officer

PURPOSE/SUMMARY OF REPORT

To consider proposed amendments to the Council's Constitution as recommended by the Standards Committee.

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 Meeting in May 2023.
- 1.2 The Council is required by law to prepare and keep up to date a Constitution which explains how the Council operates, how decisions are made and the procedures which are to be followed to ensure that these are efficient, transparent and accountable to local people.
- 1.3 Article 1 of the Constitution stipulates that the Monitoring Officer must monitor and review how it is working to make sure it gives full effect to its purpose.
- 1.4 On 19th June 2023 the Monitoring Officer recommended two changes to the Officer Delegation Scheme which were approved by Standards Committee and which are outlined below.

2. Details of Proposal or Information

Junior Executive Members

- 2.1 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.

- 2.2 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.

Access to Information Rules

- 2.3 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.
- 2.4 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) Regulations 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.
- 2.5 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.

- 2.6 A revised version of the Access to Information Rules is attached at Appendix 2.

Executive/Scrutiny Protocol

- 2.7 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.

- 2.8 A proposed Executive/Scrutiny Protocol for insertion into the constitution is attached at Appendix 3.

Community Call for Action (CCfA)

- 2.9 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 4.5.1 rectifies this and updates Part 4.5 as originally intended.
- 2.10 A revised Community Call for Action is attached at Appendix 4.

Members Roles and Responsibilities

- 2.11 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.
- 2.12 In addition the roles and responsibilities of the Vice-Chair of the Council has been added for clarity purposes
- 2.13 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

- 2.14 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 The Standards Committee have agreed the above changes
- 3.2. It is required by law to keep an up to date constitution. Part of the role of the Standards Committee is to review the document on a regular basis to make such recommendations to Council as necessary.

4 Alternative Options and Reasons for Rejection

- 4.1 The Council may make other amendments or reject the amendments proposed as part of this review, however the rationale for each proposal has been to ensure the Council’s procedures comply with the law, are in line with best practice, are practical and up-to-date, as well as in accordance with other decisions taken by the Council. No alternative options are therefore proposed.

RECOMMENDATION(S)

1. That the amendments to the Constitution detailed in the report be approved

Approved by the Portfolio Holder – Corporate Governance

IMPLICATIONS:

Finance and Risk: Yes No

Details: There are no financial or risk implications arising from this report.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details: It is a requirement under Council Procedure Rule 1.1 (o) of the Council’s Constitution, that Annual Council Meeting agrees the Scheme of Delegation as set out in Part 3 of the Constitution.

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: Not applicable to this report.

Staffing: Yes No

Details: There are no human resource issues implications arising from this report.

On behalf of the Head of Paid Service

DECISION INFORMATION

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: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No

District Wards Significantly Affected	All
Consultation: Leader / Deputy Leader <input checked="" type="checkbox"/> Executive <input type="checkbox"/> SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	Details: Deputy Leader

Links to Council Ambition: Customers, Economy and Environment.

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

Background Papers

(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).

None