

CONSTITUTION UPDATE

Cabinet Member Cllr Peter Hare-Scott
Responsible Officer Monitoring Officer

Reason for Report: To amend the Constitution following Council's decision to reinstate a separate Standards Committee.

RECOMMENDATION(S):

The Committee approve the changes to the Constitution contained in Appendix A and recommend to Full Council for approval

Financial Implications: None

Legal Implications: Failure to follow the correct and proper process when making these changes would be unconstitutional

Risk Assessment: Failure to follow the correct and proper process when making these changes would be unconstitutional

1.0 Introduction

1.1 Following the Full Council meeting on 24th April 2013, where Council approved reverting back to a separate Standards Committee this report updates the relevant sections of the Constitution.

1.2 The purpose of this report is to amend the Constitution prior to the first meeting of the Standards Committee taking place.

Contact for more Information: Kevin Finan, Chief Executive

Circulation of the Report: Leader of the Council

Summary and Explanation

The Council's Constitution

Mid Devon District Council has agreed a new constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Constitution is divided into 16 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols in Parts 3 – 7.

The main features of the Constitution are as follows:

- the Council meeting will set the overall budget and policy framework and will be a focus for debate about the performance of the Cabinet;
- a small Cabinet body consisting of a Leader, Deputy Leader and other Cabinet members will make decisions within the policy and budget framework established by full Council. Decisions will be delegated to the Cabinet as a body or individual Cabinet Members;
- a Scrutiny Committee will hold the Cabinet to account and may review areas of Council activity or matters of wider local concern;
- Policy Development Groups will review and develop policy and may review areas of wider local concern;
- the Audit Committee will provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment and to oversee the financial reporting process.
- The Standards Committee will promote high standards of conduct and support Councillors' observance of their Code of Conduct to fulfil the ethical requirements of the Localism Act 2011;
- most regulatory decisions will continue to be made by bodies of the Council;

What's in the Constitution?

Article 1 of the Constitution commits the Council to principles of community leadership, public involvement and efficient, effective, transparent and accountable decision making. Articles 2 – 16 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2).
- Citizens and the Council (Article 3).
- The Council meeting (Article 4).
- Chairing the Council (Article 5).
- Scrutiny Committee, Audit Committee, Standards Committee and Policy Development Groups (Article 6).

- The Cabinet (Article 7)
- Regulatory and other bodies of the Council (Article 8).
- Area Committees (Article 9).
- Joint arrangements (Article 10).
- Officers (Article 11).
- Decision making (Article 12).
- Finance, contracts and legal matters (Article 13).
- Review and revision of the Constitution (Article 14).
- Suspension, interpretation and publication of the Constitution (Article 15).

How the Council operates

The Council is composed of 42 councillors elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Monitoring Officer trains and advises them on the code of conduct.

All councillors meet together as the Council. Meetings of the Council are normally open to the public. Here councillors decide the Council's overall policies, particularly Statutory Plans, and set the budget and Council Tax each year. The Council elects the Leader of the Council and he appoints the deputy leader and the other members of the Cabinet. The Council appoints members of all the other bodies of the Council and most representatives on outside bodies annually. The Council may question the performance and decisions of the Cabinet and of other bodies of the Council. It receives annual and other reports from the Leader of the Council, chairmen of other bodies and individual councillors. The Council may determine those matters not within the remit of any of its reporting bodies. Council meetings may include formal decision making, wider debates and presentations. The Council may also meet informally in workshops and seminars.

How Decisions Are Made

The Cabinet is the part of the Council which is responsible for most day-to-day decisions. The Cabinet is made up of the Leader of the Council, the Deputy Leader of the Council and between 3 and 8 other councillors all appointed by the Council. When major decisions are to be discussed or made, these are published in the Cabinet's forward plan in so far as they can be anticipated. If these major decisions are to be discussed with council officers at a meeting of the Cabinet, this will be open for the public to attend except where personal or confidential matters are being discussed. The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

Scrutiny

There is a Scrutiny Committee, an Audit Committee, a Standards Committee and three Policy Development Groups which support the work of the Cabinet and the Council as a whole. They allow citizens to have a greater say in Council matters by

holding public inquiries into matters of local concern. These lead to reports and recommendations which advise the Cabinet and the Council as a whole on its policies, budget and service delivery. Scrutiny Committee also monitors the decisions of the Cabinet. It can ‘call-in’ a decision which has been made by the Cabinet but not yet implemented. This enables the committee to consider whether the decision is appropriate. Scrutiny Committee may recommend that the Cabinet reconsider the decision. Scrutiny Committee may also be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

The Council’s Staff

The Council has people working for it (called ‘officers’) to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between officers and councillors of the Council.

Citizens’ Rights

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council’s own processes. The local Citizens’ Advice Bureau can advise on individuals’ legal rights.

Where members of the public use specific council services, for example as an applicant for benefit, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council and its other bodies except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a mayoral form of Cabinet;
- ask questions at Cabinet meetings;
- by invitation may contribute to debates of the Scrutiny Committee and Policy Development Groups;
- find out, from the Cabinet’s forward plan, what major decisions are to be discussed by the Cabinet or decided by the Cabinet or officers, and when;
- attend meetings of the Cabinet where key decisions are being discussed or decided;
- see reports and background papers, and any record of decisions made by the Council and Cabinet;
- complain to the Council about something the Council has done wrong, failed to do or if the Council has not treated a citizen in a professional or courteous manner;

- complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- complain to the Monitoring Officer if they have evidence which they think shows that a councillor has not followed the Council's Code of Conduct; and
- inspect the Council's accounts in accordance with the annual audit process and make their views known to the external auditor.

The Council welcomes participation by its citizens in its work.

A detailed statement of the rights to inspect agendas, reports, background papers and minutes of meetings of the council and its bodies is set out in Part 4.

Article 6 – Scrutiny Committee, Audit Committee, Standards Committee and Policy Development Groups

6.01 Terms of Reference

The Council will appoint the Scrutiny Committee, Policy Development Groups and Audit Committee with the following functions:

6.02 Scrutiny Committee: General role

The Scrutiny Committee will:

- (a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) make reports and/or recommendations to the full Council and/or the Cabinet and/or any policy, joint or other bodies of the Council in connection with the discharge of any functions;
- (c) make reports and/or recommendations to the full Council on any matters of broad local concern or importance not otherwise specified within the remit of the Policy Development Groups;
- (d) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet or key decisions made but not yet implemented by officers; and

6.03 Scrutiny Committee: Specific functions

The Scrutiny Committee may:

- (a) review and scrutinise the decisions made by and performance of the Cabinet and/or council officers both in relation to individual decisions and decisions made over time and may question members of the Cabinet and/or officers whether generally or in relation to specific decisions, initiatives or projects;
- (b) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (c) make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process;
- (d) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address Scrutiny and local people about their activities and performance; and
- (e) question and gather evidence from any person with a relevant knowledge, expertise or responsibility (with their consent).

6.04 Officers

Scrutiny Committee will have continuity of administrative support and be able to call on other relevant officer support and external expertise where necessary.

6.05 Policy Development Groups: General role:

Within their terms of reference Policy Development Groups may:

- (a) make reports and/or recommendations to the full Council and/or the Cabinet and/or any other bodies of the Council in connection with the discharge of any functions;
- (b) make reports and/or recommendations to the full Council on any matters of broad local concern or importance within their remit; and
- (c) undertake the functions below within the thematic areas set out in the table below. These thematic areas will of necessity be broadly defined. Any potential confusion or duplication between the thematic areas of these bodies which may result in duplication of effort or omission will be resolved by the Programming Panel. The Programming Panel will also have discretion in ensuring that there is a reasonable division of issues for consideration between each of the Policy Development Groups.

Group	Thematic area
Managing the Environment	Waste and Recycling, Street Scene Services, Climate Change, Open Spaces
Decent and Affordable Homes	Provision of Affordable Housing, Tenant Satisfaction, Social Housing/Decent Homes Standard
Community Well Being	Community Leadership, Community Consultation/Development/Participation, Community Planning, Town Centre Improvements, Food, Health and Safety and Pollution Control

6.06 Policy Development Groups: specific functions:

Policy Development Groups may:

- (a) assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of current provision, performance and policy issues;
- (b) instigate research, community and other consultation in the analysis of policy issues, possible options and the development of policy;
- (c) regularly involve members of the Cabinet and occasionally members of other bodies of the Council and officers to find out their views on issues, proposals and policy affecting the area;
- (d) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address Scrutiny Committee and local people about their activities and performance;
- (e) question and gather evidence from any person with a relevant knowledge, expertise or responsibility (with their consent);

- (f) consider reports from any individual councillor on matters relevant to the terms of reference of the group to enable the views of constituents and other organisations to be taken into account; and
- (g) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

6.07 **Annual report**

Scrutiny Committee, Policy Development Groups and Audit Committee must report annually to full Council on their workings and make recommendations to amended working methods if appropriate.

6.08 **Proceedings of Scrutiny Committee, Policy Development Groups and Audit Committee**

Scrutiny Committee, Policy Development Groups and Audit Committee will conduct their proceedings in accordance with the Scrutiny Committee, Policy Development and Audit Committee Procedure Rules set out in Part 4 of this Constitution.

6.09 **Audit Committee: General Role**

Within their terms of reference, the Audit Committee may:

- (a) provide independent assurance of the adequacy of the risk management framework and the associated control environment;
- (b) provide independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment;
- (c) oversee the financial reporting process;
- (d) make reports and/or recommendations to full Council and/or Cabinet and/or any other bodies of the Council in connection with the discharge of its functions;
- (e) make reports and/or recommendations to full Council on any matters of broad local concern or importance within their remit.
- (f) promote high standards of conduct and support Councillors' observance of their Code of Conduct

6.10 **Audit Committee: Specific Functions**

The Audit Committee may:-

- (a) **Audit Activity:-**
 - (i) consider and approve the strategic audit approach and the annual audit programme;
 - (ii) consider the annual internal audit report including an overall opinion on the adequacy of the Council's control environment, the extent to which the audit plan has been achieved, and a summary of any unresolved issues;
 - (iii) consider summaries of specific internal audit reports as requested;

- (iv) in the event of the audit service being contracted out, consider reports dealing with the management and performance of the providers of internal audit services;
- (v) consider reports from internal audit on agreed recommendations not implemented within reasonable timescales;
- (vi) consider the external auditor's annual letter, relevant reports and the report to those charged with governance;
- (vii) consider specific reports as agreed with the external auditor;
- (viii) comment on the scope and depth of external audit work and to ensure it gives value for money;
- (ix) liaise with the Audit Commission over the appointment of the Council's external auditor should that become necessary;
- (x) commission work from internal and external audit.

(b) ***Internal Controls***

- (i) maintain an overview of this Constitution including the Financial and Contract Procedure Rules;
- (ii) review any issues referred to by the Chief Executive or any Council body;
- (iii) monitor the Council's confidential reporting policies in relation to anti fraud and anti corruption and whistle blowing, including monitoring the use of the Whistle Blowing policy and the Council's Complaint process;
- (iv) annually approve the Council's Risk Management Strategy and review the effectiveness of the Council's Risk Management process on a regular basis and gain assurance that appropriate action is being taken to ensure that corporate risks are being managed, including a report to the Council annually;
- (v) oversee the production of the Council's Annual Governance Statement and to ensure that relevant and suitable evidence has been obtained to support the disclosures within the Statement;
- (vi) review the Council's Annual Governance Statement and recommend its approval to Full Council and monitor the progress against the Annual Statement action plan on a regular basis;
- (vii) annually review and update the Council's Code of Corporate Governance to ensure compliance with best practice and legislative guidance;
- (viii) consider the Council's compliance with its own and other published standards and controls.

(c) ***To review and formally approve the Annual Statement of Accounts***

- (i) consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from audit regarding the robustness of the accounts that need to be brought to the attention of the Council;

- (ii) consider the external auditor's reports to those charged with governance on issues arising from the audit of the accounts.

6.11 **Standards Committee: General role**

The Council shall establish a Standards Committee to carry out its functions relating to ethical matters under the Localism Act 2011.

6.12 **Standards Committee: Composition**

- (i) The Standards Committee shall be composed of nine District Councillors
- (ii) The Standards Sub-Committee shall be composed of three of the District Councillors on the Standards Committee

6.13 **Standards Committee: Specific Functions**

The Standards Committee will have the following roles and functions:

- (i) Promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- (ii) Assisting the Councillors and co-opted members to observe the Member's Code of Conduct;
- (iii) Advising the Council on the adoption or revision of the Members' Code of Conduct;
- (iv) Monitoring the operation of the Members' Code of Conduct;
- (v) Advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- (vi) Granting some dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Members' Code of Conduct;
- (vii) Dealing with any reports from a case and any other report from the Monitoring Officer on any matter;
- (viii) Exercising of (i) to (vii) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils;
- (ix) Overview of complaints handling and Ombudsman investigations;
and
- (x) Overview of the Constitution

6.14 **Standards Sub Committee: Specific Functions**

The Standards Sub-Committee will have the following roles and functions

- (i) To conduct hearings into allegations of the Code of Conduct following referral from the Monitoring Officer