

Cherwell District Council

Council

14 December 2020

Constitution Review

Report of Corporate Director – Commercial Development, Assets and Investment & (Interim) Monitoring Officer

This report is public

Purpose of report

This report presents to Council the recommendations of the Overview and Scrutiny Committee for changes to the Constitution and for procedures for its annual review.

1.0 Recommendations

The meeting is recommended to agree the following proposals from the Overview and Scrutiny Committee:

Rules of debate:

- 1.1 to make no changes to the current process as regards the order of speakers in a debate but to clarify that the seconder can speak at any point if they have reserved their right and that this does not mean they must be the penultimate speaker;
- 1.2 to make no change to the existing rule that once the proposer of a motion or amendments begins summing up, no further speakers will be heard

Length of speeches (including all committees):

- 1.3 to reduce the length of speeches for proposers to and proposers of amendments to five minutes (from current 10 minute)
- 1.4 to reduce the length of speeches for seconder, and seconder of amendments and all other speakers to three minutes (from current 5 minutes);

Deadlines for submitting amendments to motions:

- 1.5 to make no changes to the existing deadlines (5pm, two working days before the meeting)
- 1.6 to maintain the current word limit for amended motions as 250 words

Process for dealing with motions with budgetary implications:

- 1.7 to encourage members to submit motions early and discuss with officers to enable a review in the light of budgetary implications, with the introduction of a threshold of “£10,000 or more” to inform what “significant” means in terms of the current budget or capital expenditure

- 1.8 to allow amendments to motions deferred for budgetary reasons to be amended when resubmitted to Council

Motions without notice/procedural motions:

- 1.9 to make no changes to the current arrangement that a procedural motion, once proposed and seconded, requires only a simple majority to succeed

Recorded vote:

- 1.10 to make no changes to the current arrangement that a request for a recorded vote needs only a proposer and seconder to succeed

Public addresses (not Planning Committee):

- 1.11 to make no changes to current arrangements for
- i) public speakers to register by noon on the working day before the meeting
 - ii) five minutes per public speaker
 - iii) no time limit on the number of public speakers or the time allowed for the public address item

Order of business/finish time for Full Council:

- 1.12 to change the order of business for Full Council so that motions are taken after questions and reports (noting that the Constitution allows the Chairman to amend the order of business in any case in any given instance)
- 1.13 to introduce a finish time of 11 pm for Full Council meetings with the provisos that the meeting would not stop mid-way through an item; the Chairman of the Council has discretion to continue the meeting to conclude business, if, in the opinion of the Chairman, this would be appropriate; and that any motions not considered would be carried forward to be considered at the next scheduled Full Council meeting.

Planning Committee:

- 1.14 to allow remote tools (drones) in facilitating site visits but to be clear that this does not replace the option for physical site visits and any such footage and usage should be approved by Planning officers to ensure impartiality
- 1.15 to retain current arrangements whereby
- i) there is no separate slot for councillor questions of clarification to the officer after a presentation of a planning application
 - ii) County councillors are allowed to speak as members of the public (i.e. no separate right to speak)
- 1.16 to introduce a ten-minute time limit for non-committee ward members in addressing the Committee

Terminology and glossary:

- 1.17 to introduce a glossary to the Constitution to bring clarity to members of the public, officers and councillors
- 1.18 to achieve consistency within the Constitution by using the following words:
- i) Executive (not Cabinet)
 - ii) Chairman of a meeting (with the proviso that a person chairing a committee may call themselves by whichever term e.g. Chair)
 - iii) Resident (rather than citizen)
- 1.19 to continue to use the following terms but provide contextual clarity (and explanation in the glossary) for the use of each:
- i) Councillor and member

- ii) Chief Executive and Head of Paid Service
- iii) Chief Finance Officer and S151 Officer

Annual Review of the Constitution:

- 1.20 to introduce an annual review of the Constitution whereby
- i) At its October and December meeting, the Overview & Scrutiny Committee will consider and make recommendations to Full Council for agreement in December, (with the potential for the Committee to convene a Constitution Review Working Group to offer advice if appropriate)
 - ii) Such a review to include a notice of any changes made in-year under officer delegations to reflect legislation and transfers of functions
 - iii) Any significant changes would be submitted to Full Council as necessary for consideration

Council is further recommended:

- 1.21 to note that the Monitoring Officer will amend the Constitution to reflect the decisions of Council.
- 1.22 to note the areas being reviewed by the Monitoring Officer under delegated authority (as set out in paragraph 3.3).

2.0 Introduction

- 2.1 On 1 December, the Overview and Scrutiny Committee considered recommendations from the cross-party Constitution Review Working Group. The Group was set up by the Council to consider areas of focus for potential change within the Constitution and to make recommendations to the Committee about them.
- 2.2 For reference, the areas of focus for the review as originally agreed by Council are included at Appendix 1.
- 2.3 The previous reports to the Committee and Full Council are available at the following links:
- [Overview and Scrutiny Committee 7 October 2020](#)
[Council 19 October 2020](#)
[Overview and Scrutiny Committee 1 December 2020](#)
- 2.4 The review was carried out because Council recognised that the Constitution should be reviewed from time to time so that it remains fit for purpose. This includes giving clarity to the public, to Members and to officers about who can make decisions and about how business is conducted.
- 2.5 Prior to the Working Group being commissioned, a survey of councillor views had been undertaken. Bevan Brittan had also been asked to provide a view on the Council's current Constitution, in the context of other approaches across the country. Both of these sources were considered and informed the Working Group's discussion and the Committee's recommendations.

- 2.6 Going forward, the Working Group has recommended that an annual review of the Constitution be undertaken. The Committee agreed. Under the proposal, at its October and December meetings, the Overview and Scrutiny Committee would consider and agree recommendations to the December meeting of Council. At its October meeting, the Overview and Scrutiny Committee will determine whether or not to establish a time limited Working Group to support the review process. Any significant change would continue to be submitted to Council as necessary for consideration. A significant change would be a matter of substance: that is, changes other than administrative amendments made by the Monitoring Officer under delegated authority for clarity, to correct errors and to ensure the Constitution remains up to date and self-consistent.
- 2.7 In addition to the matters addressed by the Working Group and the Committee, officers are reviewing the Constitution administratively to bring greater clarity to its structure making it more user friendly and to ensure it reflects up to date legislation and officer structures. Appendix 2 sets out the draft contents of the updated Constitution.

3.0 Report Details

- 3.1 Council is being asked to approve the Overview and Scrutiny Committee's recommendations as set out in Section 1 of this report.
- 3.2 The recommendations as framed by the Committee are in line with the best practice recommendations of Bevan Brittan. As regards recommendation 1.7 (motions with budgetary implications), while not specifically recommended by Bevan Brittan, this is consistent with the practice of Oxfordshire County Council and will provide clarity for Members and officers when considering such motions.
- 3.3 The following sections of the Constitution are being reviewed administratively by the Monitoring Officer under delegated authority to ensure that they are up-to-date and reflect current legislation, best practice and arrangements:
- Introduction
 - 2.2: Executive Procedure Rules
 - 2.3: Overview and Scrutiny Procedure Rules
 - 2.4 Appeals Panel Procedure Rules
 - 2.5: Licensing Committee Procedure Rules
 - 2.7: Roles and Appointments
 - 3.3: Respective Roles of Members and Officers and Dealing with Conflicts of Interest
 - 3.4: Conventions for the Management of Council Business and a Protocol on Member-Officer relations
 - 3.5: Members' Planning Code of Conduct
 - 3.6: Bias and Predetermination – A Guidance Note for Members

4.0 Conclusion and Reasons for Recommendations

- 4.1 It is essential to review the Constitution to ensure it remains fit for purpose. Using feedback from Members and national best practice has identified areas for change

which would potentially improve the business of council meetings and the experience of them for members and the public. A cross-party Working Group has brought a further, detailed elected member perspective as has consideration by the Overview and Scrutiny Committee.

- 4.2 It is considered that these proposals would give greater clarity of expectation for everyone on their rights of participation, whether as a councillor or a member of the public. It is suggested that, together, these changes will have positive impact on the productivity of the meetings and of pre-meeting preparations.

5.0 Consultation

All Cherwell District Councillors and political groups
Senior managers – members of CEDR (Chief Executive's Direct Reports)
Democratic and Elections Team
Monitoring Officer
Bevan Brittan, experts in local government constitutions

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Do not make any changes – this is not recommended as, currently, there are impracticalities and confusions that cause a disproportionately negative effect on the productivity of the Council's decision making

Option 2: Align the Constitution to that of the Council's partner, Oxfordshire County Council – while it is appropriate to harmonise where possible (and several of the areas for further consideration above are already in place for Oxfordshire County Council) it is important that this Council's Constitution reflects the democratic decision-making culture of this Council

Option 3: Align the Constitution to the 'model constitution' circulated nationally – this is not recommended as the national model is several years' old now and it is important that this Council's Constitution reflects the democratic decision-making culture of this Council

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial or resource implications consequent on these recommendations.

Comments checked by:

Michael Furness, Assistant Director – Finance

michael.furness@cherwell-dc.gov.uk 01295 221845

Legal Implications

- 7.2 The Council is required to have and to publish a Constitution and to keep it under review.

Comments checked by:

Richard Hawtin, Team Leader – Non-Contentious
richard.hawtin@cherwell-dc.gov.uk 01295 221695

Risk Implications

- 7.3 The risk of not making changes is that the decision-making of the authority, and its reputation as a business-like and transparent organisation suffers through a lack of challenge and development.

Comments checked by:

Louise Tustian, Head of Insight and Corporate Programmes
louise.tustian@cherwell-dc.gov.uk 01295 221786

Implications for equality and diversity

- 7.4 The Constitution will be reviewed generally to ensure that the format is easily accessible. This is an important step in ensuring that access to the democratic process is equitable. However, the inclusivity of opportunity to engage with the authority – as members or members of the public – is enhanced by the clarity of expectation represented by the recommendations. Of course, officers and the councillors chairing committees will consider the specific requirements of individuals and will make reasonable adjustments where necessary within the Constitution to ensure that no councillor or member of the public is unfairly discriminated against. Sufficient flexibility will be retained after any changes to ensure that this will remain the case. The report does not otherwise raise any implications for equality and diversity.

Comments checked by:

Robin Rogers, Head of Strategy
robin.rogers@cherwell-dc.gov.uk, 07789 923206

8.0 Decision Information

Key Decision

Financial Threshold Met: N/A

Community Impact Threshold Met: N/A

Wards Affected

All

Links to Corporate Plan and Policy Framework

All aspects as the Constitution sets out how the Council operates

Document Information

Appendix number and title

- Appendix 1 - Areas of focus for the Constitution review
- Appendix 2 - Outline contents for the updated Constitution

Background papers

None

Report Author and contact details

Glenn Watson, Principal Governance Officer 07776 997946

glenn.watson@cherwell-dc.gov.uk