

Cherwell District Council

Council

18 May 2022

Constitution Updates

Report of Interim Monitoring Officer

This report is public

Purpose of report

The Constitution is the document by which, in accordance with the law, the Council exercises all its powers and duties. It is essential that it is reviewed to ensure it remains fit for purpose.

This report presents updates to the Constitution which have arisen either from the end of the formal partnership working between Cherwell District Council and Oxfordshire County Council or to incorporate within the Constitution procedures that are currently followed as custom but not included in the Constitution.

1.0 Recommendations

The meeting is recommended:

- 1.1 To endorse the inclusion in the Constitution of the custom to allow the proposer of the budget, Group Leaders and proposers of amendments to speak for up to 10 minutes when Council considers the annual budget setting report.
- 1.2 To adopt the revised Financial Procedure Rules (Appendix 1) and delegate authority to the Monitoring Officer, in consultation with the Section 151 Officer, to make any further changes required arising from the separation from Oxfordshire County Council.
- 1.3 To note the Officer Scheme of Delegation Transfer of Functions (Appendix 3) and that the Monitoring Officer will undertake a detailed review of the Officer Scheme of Delegation to reflect the Cherwell District Council Leadership Team following the end of the formal partnership working arrangements with Oxfordshire County Council.

2.0 Introduction

- 2.1 The Constitution is the document by which, in accordance with the law, the Council exercises all its powers and duties. It is essential that it is reviewed to ensure it remains fit for purpose.

- 2.2 The Monitoring Officer is responsible for assessing the effectiveness of the constitution and recommending changes in the light of legislation or best practice. The Monitoring Officer may make factual changes to the Constitution as necessary in order to ensure that the Constitution complies, and keeps up to date, with the law. Any significant proposed amendments to this Constitution shall be agreed by Council.

3.0 Report Details

- 3.1 A resolution of the 2020 Constitution review was that an annual review of the Constitution be introduced whereby, the Overview and Scrutiny Committee would consider and make recommendations to Full Council for agreement,. The annual review would also include notice of any changes required by law.
- 3.2 The annual review was due to commence in early 2022, however the decisions of Cherwell District Council and Oxfordshire County Council (OCC) to formally terminate the formal partnership working arrangements between the two councils has impacted the review.
- 3.3 At the 7 February 2022 Extraordinary Council meeting, an interim Monitoring Officer was appointed and given delegated authority to undertake a review of the existing Scheme of Delegation to ensure that decision making is both effective and efficient. The interim Monitoring Officer was also delegated responsibility to undertake amendments to the Council's Constitution to reflect the resolutions arising from the report regarding the termination of the s.113 partnership with OCC.
- 3.4 The delegations granted by Council do not however incorporate all areas that were agreed as the scope of the 2021/2022 annual Constitution review. There remains work to be done on the Contract Procedure Rules, Members' Planning Code of Conduct, Councillor call-in of planning applications, and the addition of Council budget debate speaking procedures. These will be presented to a future meeting of Council.

Council Debate as part of Budget Setting

- 3.5 The rules of debate are set out at Section 4.22 of the Constitution. This includes limits on the length of speeches as follows: 5 minutes for the proposers of motions and proposers of amendments to motions and 3 minutes for all other speakers.
- 3.6 It is custom at Full Council when the budget is set for the following year for standing orders to be suspended in terms of the length of speeches for the proposer of the budget, Group Leaders and proposers of amendments with able to speak for up to 10 minutes. All other speakers remain limited to 3 minutes.
- 3.7 This custom is not currently included in the Constitution. For openness, transparency and clarify for Members, officers and the public, it is proposed to be incorporated into the Rules of Debate in the Constitution.

Financial Procedure Rules and Contract Procedure Rules

- 3.8 The Financial Procedure Rules are set out at Part 21 of the Constitution. The current version was adopted in June 2020.

- 3.9 The Financial Procedure Rules are part of the constitution and provide the framework for managing the financial affairs of Cherwell District Council. They apply to every Member and all staff and anyone acting on their behalf, including contractors.
- 3.10 The Interim Monitoring Officer and Section 151 Officer have reviewed the Financial Procedure Rules and updated to ensure they reflect the new Cherwell District Council management structure and are consistent with the delegations to Council, Executive, Committees and Officers.
- 3.11 The revised Financial Procedure Rules are attached at Appendix 1. A schedule of changes is attached at Appendix 2. It is proposed that delegated authority be granted to the Monitoring Officer, in consultation with the Section 151 Officer, to make any further changes arising as a result of the end of the formal partnership working arrangements between Cherwell District Council and Oxfordshire County Council.
- 3.12 The Financial Procedure Rules must be read with the Contract Procedure Rules which together provide a comprehensive framework for financial management of the Council.
- 3.13 The Contract Procedure Rules are set out at Part 22 of the Constitution. In light of the service review of the procurement function, which currently sits with Oxfordshire County Council, the Monitoring Officer and Section 151 Officer are continuing to review the Contract Procedure Rules. It is anticipated that an updated version will be submitted to the July meeting of Council.

Officer Scheme of Delegation – Transfer of Functions

- 3.14 The Officer Scheme of Delegation is set out at Part 3 of the Constitution and sets out the extent to which the powers and duties of the Council are delegated to officers under the Local Government Act 1972, the Local Government Act 2000 and all other powers enabling delegation to officers. It is adopted with the intention of giving a streamlined, clear and simple decision-making process.
- 3.15 The current published version of the Officer Scheme of Delegation does not reflect the revised Leadership Team agreed as a result of the end of the formal partnership working with Oxfordshire County Council.
- 3.16 The Officer Scheme of Delegation allows for a transfer of functions, whereby where the name of a post is changed, or its relevant functions become vested in a different post, any delegated powers possessed by the post shall be retained by the renamed post or transferred to the different post as the case may be. This includes any delegated powers vested in a post by resolution of the Council, the Executive or a Committee/Sub Committee. Where a Division is restructured, the Chief Executive has authority to re-allocate the delegated powers to other posts.
- 3.17 The Constitution requires that the use of this delegation is reported to Council. Appendix 3 sets out the transfer of functions and reallocation of delegated powers for Council to note.

- 3.18 An updated version of the Officer Scheme of Delegation will be published to reflect these changes. The Monitoring Officer will undertake a detailed review of the Officer Scheme of Delegation to reflect the Cherwell District Council Leadership Team following the end of the formal partnership arrangements with Oxfordshire County Council.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The Constitution is the document by which, in accordance with the law, the Council exercises all its powers and duties. It is essential that it is reviewed to ensure it remains fit for purpose.

5.0 Consultation

None in the preparation of this report, however the Overview and Scrutiny Committee endorsed the areas for review at its meeting of 15 March 2022.

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: Not to adopt the agree the recommendations. This is not recommended as it is important that the Constitution is updated to reflect the changes arising from the end of the formal partnership working between Cherwell District Council and Oxfordshire County Council.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no direct financial or resource implications arising from this report.

Comments checked by: Michael Furness, Assistant Director of Finance & Section 151 Officer, 01295 221845, Michael.Furness@cherwell-dc.gov.uk

Legal Implications

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

Comments checked by: Shahin Ismail, Interim Assistant Director Law, Governance & Democratic Services & Monitoring Officer, shahin.ismail@cherwell-dc.gov.uk

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: Celia Prado-Teeling, Interim Assistant Director Customer Focus, 01295 221556, Celia.prado-teeling@cherwell-dc.gov.uk

Equalities and Inclusion Implications

- 7.4 The Constitution is 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. The report does not otherwise raise any implications for equality and diversity.

Comments checked by: Celia Prado-Teeling, Interim Assistant Director Customer Focus, 01295 221556, Celia.prado-teeling@cherwell-dc.gov.uk

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

N/A

Lead Councillor

N/A

Document Information

Appendix number and title

- Appendix 1 – Revised Financial Procedure Rules
- Appendix 2 – Schedule of changes to the Financial Procedure Rules
- Appendix 3 – Transfer of functions officer scheme of delegation

Background papers

None

Report Author and contact details

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