



**EAST STAFFORDSHIRE BOROUGH COUNCIL**

**REPORT COVER SHEET**

<b>Title of Report:</b>	Review of the Constitution	To be marked with an 'X' by Democratic Services after report has been presented
<b>Meeting of:</b>	Corporate Management Team [16 <sup>th</sup> November 2022]	X
	Leader and Deputy Leaders [22 <sup>nd</sup> November]	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group [30 <sup>th</sup> November/1 <sup>st</sup> December]	X
	Council [12 <sup>th</sup> December 2022]	
	Audit Committee [DATE] / Scrutiny Community Regeneration Committee [DATE] / Scrutiny Environment and Health and Well Being Committee [DATE] / Scrutiny Value for Money Council Services Committee [DATE]	N/A



<b>Is this an Executive Decision:</b>	NO	<b>Is this a Key Decision:</b>	NO
<b>Is this in the Forward Plan:</b>	[YES/NO]	<b>Is the Report Confidential:</b>  <b>If so, please state relevant paragraph from Schedule 12A LGA 1972:</b>	NO  N/A

**Essential Signatories:**

**ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE**

Monitoring Officer: **John Teasdale**

Date ..... Signature .....

Chief Finance Officer: **Sal Khan**

Date ..... Signature .....

**EAST STAFFORDSHIRE BOROUGH COUNCIL**

**Report to LDL**

**Date: 22<sup>nd</sup> November 2022**

**REPORT TITLE: Review of the Constitution**  
**PORTFOLIO: Legal and Assets – Leader of the Council**  
**HEAD OF SERVICE: Andy O’Brien**  
**CONTACT OFFICER: John Teasdale Ext. No. x1267**  
**WARD(S) AFFECTED: N/A**

**1. Purpose of the Report**

- 1.1. To seek the approval of various amendments to the Councils Constitution following the meetings of the Constitution Working Group.
- 1.2. The Constitution Working Group was established in spring 2022 and consisted of Leaders from each political group, the Chief Executive, the Monitoring Officer and officers from the Council’s Democratic Services Department. Different individual members of the Independent Alliance attended meetings of the Working Group due to changes in leadership over the course of the meetings.
- 1.3. The Working Group met on 8 occasions to consider and work through each section of the Constitution and considered what changes would better reflect the working arrangements of the Borough Council.
- 1.4. Parts of the Constitution which required a more extensive consideration by Human Resources and Finance have not been considered or revised, specifically parts:  
  
4B; 4D; 4E; 4H; 4I; 4N; 5B.
- 1.5. It should be noted also that some parts of the Constitution following the review have required little or no change.

## **2. Executive Summary**

- 2.1. The Council's Monitoring Officer is required to review the Council's Constitution each year to ensure that its aims and principles are given full effect in accordance with Part 2 paragraph 14 of the Constitution.
- 2.2. The Council's Constitution was originally based on a model published by Central Government following the introduction of the Local Government Act 2000. Since then the Constitution has undergone various amendments to reflect how the Council operates. This report details the latest amendments to be considered by Full Council.

## **3. Background**

- 3.1. Each Local Authority is required to publish the arrangements it has made to discharge its functions in a "constitution" prepared in accordance with Section 37 of the Local Government Act 2000.
- 3.2. The Constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure business is conducted in an efficient, transparent, and accountable manner. Some of the content of the Constitution is required by law; the remainder is for the Council itself to determine.
- 3.3. Annually the Constitution is reviewed to ensure it continues to promote timely, effective, transparent and lawful decision making; reflecting the arrangements Members have put in place for the running of the Council. For example, recent updates to the Constitution were approved by Full Council at meetings held in June 2021 and February 2022.
- 3.5 The Monitoring Officer has a duty to keep the Constitution under review and has delegated authority to amend the Constitution. However the following Parts of the Constitution (other than re-numbering where necessary) can only be approved by Full Council:
  - Part 1 – Summary and Explanation
  - Part 2 – Articles
  - Part 3 – Responsibility for Functions, Procedures and Delegation of Powers
  - Part 3A – Council Meeting Procedure Rules
  - Part 3B – The Full Council
  - The Functions set out in Parts, 3D, 3E, 3F, 3G, 3H, 3Ia, 3Ib, 3Ic, 3Id, 3J and 3K (the Committees can change their own procedures and they can change their own delegation of powers to Sub-Committees &/or Officers).
  - Part 3Z – Officers
  - Part 3Zb – Statutory Officers
  - Part 4D – The Contract Procedure Rules
  - Part 4E – The Corporate Governance Statement

- Part 4F and Part 4G – Disciplinary Procedures for Chief Officers and Statutory Officers
- Part 4H – The Financial Regulations
- Part 4I – The Officer Employment Rules
- Part 5A – Code of Conduct for Councillors
- Part 5C – Protocol for Councillor/Officer Relations
- Part 5D – Councillors’ Code regarding Gifts & Hospitality
- Part 5E – Councillors’ Planning Code of Conduct
- Part 6 – Councillors Allowance Scheme

3.6 The current review of the Constitution by the Working Group has suggested several changes to the Constitution, some of which now requires the approval of Full Council.

#### **4. Contribution to Corporate Priorities**

4.1. This report links to the Corporate Priority of ‘Value for Money Council’. The changes proposed will enable the efficient and effective functioning of Council meetings

#### **5. Main Body of Report**

5.1. Following the meetings of the Working Group, the suggested changes to the Constitution can be summarised as follows:

- Deputy Leaders are now referred to as Cabinet Members, throughout;
- Further clarification between the Council as a corporate body and Full Council as the decisions makers, has been added;
- The definition of Citizens and their rights have been broadened and added to;
- Quorum shall now be referred to as fractions rather than numbers, i.e one-third;
  - However, this will not be the case for those committees with low membership numbers (for example: Development Plan Committee, Audit (approval of Statement of Accounts) Committee and Licensing & Gambling Acts Sub-Committee) or committees with a mixed membership (for example: Standards Committee and Audit Committee). In such instances the quorum number remains specified.
- Removal of reference to ‘Wellbeing Powers’ in Part 2 following the repeal of the legislation;
- Removal of reference to functions under the Local Government and Public Involvement in Health Act 2007 following repeal;
- In Part 3 the scrutiny time frame has been reduced from 20 working days to 15 working days;
- The rules on member interests have been developed further in Part 3A, paragraph 10; along with the introduction of substitute Councillors;

- Member speaking time has also been reduced to five minutes but can be extended with the consent of the Mayor.
- The Constitution has been amended throughout to reflect the Council's current scrutiny arrangements and committee numbers;
- The ability of 5 Members to call an extraordinary meeting under Schedule 12 of the Local Government Act 1972 is now expressed in the Constitution, Part 3A;
- Within Part 3A, any motion of which notice comes solely within the powers, duties and responsibilities of Cabinet shall, once debated by Full Council, stand referred to Cabinet to determine.
- Councillor conduct during meetings have been clarified further in Part 3A;
- Part 3B has been re-written to simplify the functions of Council;
- Part 3Z has been amended to allow the Monitoring Officer to authorise all aspects of legal proceedings;
- The Chief Officer Structure at Part 3ZA has been updated to reflect current structure;
- Removal of reference to Council's reception area, Part 4C;
- The Standards Hearing Procedure in Part 4L has been amended to enhance further the principles of Natural Justice and Procedural Fairness;
- Part 4J has been amended to allow a petition organiser up to five minutes to address the Chairman, rather than the previously stated three minutes.
- Part 4O (indemnities for Officers and Councillors) has been amended to reflect current legislation;
- The Code of Conduct, Part 5a, has been amended to encapsulate all forms of electronic communications;
- Part 5D, gifts and hospitality, has been amended to reflect current prices and costs;
- 5E – the role of members in Planning Committee has been further expanded on;
- Throughout the Constitution, the removal of Chief Officers names, referring now only to the position;
- Throughout the Constitution, the removal of reference to legislation where it isn't required;
- General review of typo's, spacing, grammar and formatting. Indeed some changes to certain parts of the Constitution amount solely to this.

5.2. The following areas were points of contention during the discussions of the Working Group and could not be agreed:

- Part 3; reducing the number of Councillors who could call-in a decision from 10 to 5;
- Public participation in Council meetings, in the form of questions by members of the public.

## 6. **Financial Considerations**

*This section has been approved by the following member of the Financial Management Unit: [Sal Khan]*

- 6.1. There are no direct financial issues arising from the recommendations of this Report.

## **7. Risk Assessment and Management**

- 7.1. The main risks to this Report and the Council achieving its objectives are as follows:

- 7.2. **Positive** (Opportunities/Benefits):

- 7.2.1. Having a clear governance framework will reduce the risk of challenge.

- 7.2.2. The Revised Constitution will better reflect and refine the Council's processes and structure.

- 7.3. **Negative** (Threats):

- 7.3.1. Leaving the Constitution in its current format has the potential to create inefficiencies across the Council.

- 7.3.2. Decisions are vitiated by reason of unlawful procedure with consequential damage to the reputation, finances and objectives of the Council.

- 7.4. The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

## **8. Legal Considerations**

*This section has been approved by the following member of the Legal Team: John Teasdale*

- 8.1. The main legal issues arising from this Report are as follows:

- 8.2. The Council is required by statute (principally the Local Government Acts 1972 and 2000, and the Local Government and Housing Act 1989) to regulate its proceedings and to have an up to date Constitution which is fit for purpose.

- 8.3. A Constitution which does not accurately reflect and accommodate the processes of the Council could lead to a legal challenge.

- 8.4. An updated Constitution will provide a clear governance framework that will further support effective, efficient and lawful decision making in a manner that also supports accountability, scrutiny, and transparency.

## 9. **Equalities and Health**

9.1. **Equality impacts:** The subject of this Report is not a policy, strategy, function or service that is new or being revised. An equality and health impact assessment is not required.

## 10. **Data Protection Implications – Data Protection Impact Assessment (DPIA)**

10.1. A DPIA must be completed where there are plans to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale
- use new technologies;
- use profiling or special category data to decide on access to services;
- profile individuals on a large scale;
- process biometric data;
- process genetic data;
- match data or combine datasets from different sources;
- collect personal data from a source other than the individual without providing them with a privacy notice ('invisible processing');
- track individuals' location or behaviour;
- profile children or target marketing or online services at them; or
- process data that might endanger the individual's physical health or safety in the event of a security breach

10.2 Following consideration of the above, there are no Data Protection implications arising from this report which would require a DPIA.

## 11. **Human Rights**

11.1. There are no Human Rights issues arising from this Report.

## 12. **Sustainability** (including climate change and change adaptation measures)

12.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures)

12.2. N/A

## 13. **Recommendation(s)**

13.1. To adopt the amended Constitution (Appendix 1).

13.2. That the Monitoring Officer be authorised to make any necessary further changes to the draft document in relation to formatting, numbering or such other changes consequential to or incidental to the intentions of Full Council.

13.3. Subsequent to paragraph 13.2, that the revised Constitution becomes effective following any such changes being implemented by the Monitoring Officer.

14. **Background Papers**

14.1. N/A

15. **Appendices**

15.1. Revised Constitution.