

Full Council – 18 February 2020

Review of the Constitution

For Decision

Portfolio Holder: Cllr S Flower, Leader of the Council

Local Councillor(s): All Councillors

Executive Director: Jonathan Mair, Corporate Director, Legal & Democratic

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Report Status: Public

Recommendation:

That the Council:

1. Support the changes to the Constitution set out in the following sections of this report:
 - 10.4 To enable the Leader to designate up to six members from the controlling group as Lead Members to work alongside portfolio holders.
 - 11.10 To replace the existing four overview and scrutiny committees with two overview committees and two scrutiny committees.
 - 11.11 That the Chairmen of the two scrutiny committees shall be members of the largest opposition group and the vice chairmen shall not be members of the controlling group.
 - 11.12 That People and Health Overview Committee should include the statutory education co-optees (for education business only) and that the People and Health Scrutiny Committee should exercise the Council's statutory health scrutiny and crime and disorder functions

- 12.3 to 12.6 To simplify and clarify the role and composition of the Staffing Committee when making senior officer appointments.
- 13.1 To add the arrangements for the appointment and terms of office of co-opted members of the Harbours Committee.
- 14.3 To implement the recommendation of a multi-agency task and finish group that the pan-Dorset Community Safety & Criminal Justice Board be disbanded.
- 15.1 To delete the interim arrangements which operated between 1 April 2019 and the first elections to Dorset Council.
- 15.2 To make other consequential changes including to Council Procedure Rule 9 (Public Participation) to reflect the importance of the voice of Parish and Town Councils and the experience of the Chairman of Council and Democratic Services in operating the rules.
- 16.1 To give the Leader authority after consulting the Chairman of the Audit and Governance Committee to make necessary drafting changes prior to publication of the Constitution.

And that the Council

- 2. (i) Ask the Audit and Governance Committee to determine any changes needed to those parts of the Constitution which contribute to the internal control environment.
- (ii) Ask the Independent Remuneration Panel to include the outcomes of the review the Constitution in their review of the Scheme of Members' Allowances.
- (iii) Agree that the next major review of the Council's governance arrangements should not take place before February 2022.

Reason for Recommendation:

To provide the Council with the good governance arrangements needed to enable the Council to be effective and efficient and achieve its ambitions for Dorset's communities - Member led and governance lite.

An already scheduled review of the Scheme of Allowances can now take into account the proposals in this report.

1. Executive Summary

- 1.1 When the Constitution of Dorset Council was adopted by the Shadow Council it was resolved that the operation of the Constitution should be reviewed after one year, in April 2020.
- 1.2 The review of the constitution has been brought forward by the Leader after consultation with Group Leaders, the Chief Executive and the Monitoring Officer. Bringing forward the review will enable any changes approved by the Council to the structure of committees and the roles of members to be implemented at the Annual Council Meeting in May (at the start of the municipal year) so that they take full year effect.
- 1.3 The recommended changes in relation to Executive support/capacity (Article 6) and Overview and Scrutiny Article (7) have been considered and supported on a cross political group basis by a Governance Task and Finish Group.
- 1.4 Other changes proposed in this report are designed (in the light of experience) to improve drafting, remove unnecessary process, remove ambiguity, correct omissions and reflect changes (for instance to joint working arrangements with BCP Council) since April 2019.
- 1.4 Some parts of the Constitution are technical in nature and relate to the responsibilities of the Audit and Governance Committee for the Council's internal control environment – for instance Financial and Administrative Regulations, Financial and Human Resources delegations and Contract Procedure Rules. It is proposed that the detailed work of reviewing these areas should be delegated by full Council to the Audit and Governance Committee.

2. Financial Implications

There may be financial implications arising from a review of the Scheme of Members' Allowances by Independent Remuneration Panel. The recommendations of the Panel will be reported to the Council meeting in May for decision.

3. Climate implications

The recommendations relating to Articles 6 and 7 will better enable the Council to address its priorities effectively, including those relating to the climate and ecological emergency.

4. Other Implications

None.

5. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Medium

Residual Risk: Low

6. Equalities Impact Assessment

The recommendations in this paper relate to the Council's governance arrangements and are not thought to disadvantage individuals or groups with protected characteristics.

7. Appendices

1. Current Governance Structure Chart
2. Proposed new Governance Structure Chart
3. Articles of the Constitution with proposed tracked changes
4. Procedure rules with tracked changes

8. Background Papers

Dorset Council Constitution adopted January 2019

9. Background to the Leader and Cabinet Model of Governance

9.1 In a council operating the Leader and Cabinet model of governance the Local Government Act 2000 sets out a division of decision making responsibility between:

- The full Council which sets the council's budget and the policy framework and

- The Executive which is responsible for making executive decisions within the budget and the policy framework set by the full Council.

9.2 Checks and balances introduced by the 2000 Act require that executive arrangements must include provision for the appointment of one or more overview and scrutiny committees.

9.3 Article 6 of the Dorset Council Constitution describes its executive arrangements and Article 7 the arrangements for Overview and Scrutiny.

10. Proposed Changes to Article 6 Executive Arrangements

10.1 In the leader and cabinet model the 2000 Act requires the executive to consist of the executive leader (elected as leader of the executive by the full council) and two or more councillors appointed to the executive by the executive leader. The maximum size of the executive, including the leader is 10 members.

10.2 Many unitary councils with their full range of local authority functions have found that even with an executive of 10 members their portfolios can be broad and extremely demanding. In addition the need to address new and urgent priorities like the climate and ecological emergency have created additional demands upon executive leadership and capacity.

10.3 To address these pressures other councils have put in place cabinet support or lead members who, whilst not members of the executive, serve to support the executive and provide additional leadership capacity.

10.4 It is recommended that Article 6 of the Constitution should be amended to enable the Leader to designate up to six lead members from the controlling group to work alongside portfolio holders.

11. Proposed Changes to Overview and Scrutiny Arrangements

11.1 Overview and scrutiny committees can be both a check upon the power of the executive and a vital resource for oversight of council services and development of policy proposals.

11.2 An overview and scrutiny committee has the power to “call in” a decision of the executive for scrutiny and a decision which is the subject of call in may not be acted upon until there has been an opportunity for scrutiny of the decision to take place and for the executive to consider any scrutiny recommendations.

- 11.3 There are a series of detailed requirements in the legislation, including that an overview and scrutiny committee may not include any member of the council's executive.
- 11.4 The council's current overview and scrutiny arrangements are illustrated in the structure at appendix 1. There are currently four overview and scrutiny committees:

1. Health
2. People
3. Place
4. Resources

Each committee consists of 10 members, including its appointed chairman and vice chairman.

- 11.5 The Local Government Act 2000 refers to a requirement for an authority to appoint one or more committees but there is no express requirement that functions relating to overview of council business and functions relating to scrutiny of the executive should be combined in the same committee.
- 11.6 The arrangements in the current Constitution where responsibility for both scrutiny of the executive and overview of council services are combined may have served to hold the existing committees back from being actively involved in shaping policies (which those same committees might later be expected to scrutinise).
- 11.7 Separating overview from scrutiny provides an opportunity for a very clear division of responsibility between:
- Those committees responsible for keeping an overview of the functions within their terms of reference and developing policy and
 - Those (scrutiny) committees responsible for challenging, reviewing or scrutinising policies developed by overview committees and the decisions or actions of the executive.
- 11.8 In such a division of responsibilities overview committees would be able to take on the role previously played by a significant number of the executive advisory panels, promote a wider involvement by non-executive members and inject real pace into the change agenda.
- 11.9 Appendix 2 illustrates a recommended committee structure in which two overview (and policy development) committees and two scrutiny committees would take the places of the existing four overview and scrutiny committees:

- People and Health Overview Committee
- Place and Resources Overview Committee

And

- People and Health Scrutiny Committee
- Place and Resources Scrutiny Committee

11.10 It is recommended that the Chairmen of the two scrutiny committees should be members of the largest opposition group and the vice chairmen should not be members of the controlling group.

11.11 It is also recommended that:

- The People and Health Overview Committee should include the statutory co-optees (for education business only)
- The People and Health Scrutiny Committee should exercise the Council's statutory crime and disorder reduction functions and
- The People and Health Scrutiny Committee should exercise the Council's statutory health scrutiny role.

11.12 Suggested terms of reference for each of the proposed committees are set out as tracked changes in appendix 3. As at present it is recommended that each of the four committees should comprise 10 members, (except that when considering education business the People Overview and Policy Development Committee should be supplemented by statutory education co-optees).

11.13 The People and Health Scrutiny Committee and the Place and Resources Scrutiny Committee would each within the scope of their terms of reference exercise section 9F Local Government Act 2000 scrutiny functions, including the power of call in and call to account.

12. Proposals in relation to the Staffing Committee

12.1 The arrangements in the current constitution comply with the law in that they create a separation between the roles of:

- Members in appointing the most senior managers and
- The Chief Executive and managers on his behalf in appointing to other roles.

12.2 The arrangements in relation to the Staffing Committee are though a confusing combination of predecessor council arrangements which have built in additional layers of process. It is proposed that the arrangements should be simplified so that the Staffing Committee is treated as a panel to

which members are appointed by group leaders whenever a senior appointment is to be made or disciplinary action considered.

- 12.3 For those senior designations recommended to the full Council (Head of Paid Service, Chief Finance Officer and Monitoring Officer) and for Executive Directors it is recommended that the Staffing Committee should comprise five members.
- 12.4 For Corporate Director appointments it is proposed that the Staffing Committee should comprise three members.
- 12.5 It is also recommended that the same arrangements should apply to interim appointments as apply to permanent contracts.
- 12.6 Changes are proposed to the Officer Employment Procedure Rules to simplify them and to ensure that they align with the terms of reference of the Staffing Committee.

13. Harbours Committee

- 13.1 The proposed changes do not alter the terms of reference of the Harbours Committee. They add arrangements for the appointment and terms of office of co-opted members of the Harbours Committee as these arrangements were omitted when the Constitution was adopted.

14. Dorset Community Safety & Criminal Justice Board

- 14.1 The Dorset Community Safety Partnership (CSP) is the statutory community safety partnership body for the area. In 2016, partners formed a pan-Dorset Community Safety & Criminal Justice Board (CSCJB) to co-ordinate the activity of community safety and criminal justice partners at a strategic level across Dorset, Poole and Bournemouth. The Dorset CSP delegated a number of statutory functions to the CSCJB to deliver on its behalf. These arrangements were reflected in the terms of reference for both groups which were incorporated in Dorset Council's Constitution as part of the establishment of the new Council.
- 14.2 Partners recently reviewed their partnership working arrangements through a multi-agency task and finish group. Members of the group recognised that statutory responsibility lay at the Dorset Council and BCP Council CSP levels and that although for some issues it makes sense to work across local authority boundaries, each area is different with differing levels of resources.
- 14.3 The task and finish group supported a proposal to disband the CSCJB and agreed to recommend the proposal to Dorset Council and BCP Council for

approval. The terms of reference of the Dorset CSP have been amended to reflect the change to community safety partnership arrangements’.

15. Consequential Changes

- 15.1 When Dorset Council was first established interim arrangements were included in the Constitution to provide a governance framework until elections to the new Council were held in May 2019. Those arrangements are now unnecessary and can be removed.
- 15.2 Other consequential changes are recommended (in the light of experience) to improve drafting, remove unnecessary process, remove ambiguity, correct omissions and reflect changes since April 2019. These include reducing the usual size of Appeals Committee Panels to five members and changes to Council Procedure Rule 9 (Public Participation) to reflect the importance of the voice of Parish and Town Councils and the experience of the Chairman and Democratic Services in operating the rules.

16. Next Steps

- 16.1 Following the Council meeting the Constitution will be reviewed and updated to reflect the decisions made. It is proposed that final sign off should be by the Leader, after consultation with the Chairman of the Audit and Governance Committee.
- 16.2 The decisions of Council will also be reported to the Independent Remuneration Panel for inclusion in their review of the Scheme of Members’ Allowances. That review will be reported on at the Annual Council meeting in May.

Jonathan Mair
Monitoring Officer
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