

Governance and Ethics Committee

26 October 2023

Report title	Changes to the Constitution	
Cabinet member with lead responsibility	Councillor Paula Brookfield, Cabinet Member for Governance and Equalities	
Accountable director	David Pattison, Chief Operating Officer.	
Originating service	Various	
Accountable employee	Michelle Rowe Email	Solicitor and Deputy Monitoring Officer Michelle.Rowe@wolverhampton.gov.uk
Report to be considered by	Council, on 8 November 2023.	

Recommendations or action or decision:

The Governance and Ethics Committee recommends that Council:

1. Approves the amendments to the Constitution as detailed in this report.
2. Authorises the Monitoring Officer to implement the changes.

1.0 Purpose

- 1.1 This report provides an update in relation to the changes proposed to the Constitution and discussed at the special meeting of Governance and Ethics Committee on 5 October 2023, for approval by the Council.
- 1.2 It is recommended that Council agrees to the proposals to ensure continuing lawfulness and effectiveness.

2.0 Background

- 2.1 Changes to the Constitution are brought in accordance with Part 2, Article 14 of the Constitution which places a duty on the Monitoring Officer *“to be aware of the strengths and weaknesses of the Constitution... and to make recommendations for ways in which it could be amended in order to better achieve the purpose [set out in Article 1]”* and to *“review the operation of the Constitution to ensure that its aims and principles are given full effect.”*
- 2.2 It is important that changes take place as and when needed, and the Governance and Ethics Committee regularly receives reports seeking to update the Constitution where it is necessary. The last such report was on 5 October 2023.
- 2.3 At a special meeting of Governance and Ethics Committee that day, proposed changes were put forward to ensure the Constitution remains up to date and reflects current laws, rules and preferred or best practice. The rationale and details of the changes is repeated at **Appendices 1-7a**. In discussion, members asked a number of supplemental questions and for further information to be obtained in relation to the proposals. This report provides responses to those questions as explained below and set out in **Appendices 8-10**.
- 2.4 Members are asked to consider this report, and the original proposals.
- 2.5 Members are also asked to note that these changes are part of a series of updates, and it is anticipated that there will be additional reports brought forward in 2023 or early 2024 to review other parts of the Constitution which reflect forthcoming changes in legislation, such as in relation to Contract Procedure Rules.

3.0 Changes to the Constitution

- 3.1 The changes proposed at the 5 October 2023 meeting related to the following areas:
 - a. Scrutiny Board and Call-in (including new form)
 - b. Electronic sealing and signing
 - c. Health and Wellbeing Together Board Terms of Reference
 - d. Full Council meeting procedure rules (including draft informal protocol for member behaviour)

- e. IEDNs (including draft guidance for members and officers) and Call-in.
- f. Miscellaneous – Disclosure and Barring Scheme (including new policy), Councillor Allowance Service, Planning Committee decisions
- g. Officer delegations.

3.2 At that meeting, members raised the following supplemental questions:

a. Call-in – Substitutions

Proposals were put forward to ensure the clerk received notification of substitutes in good time in order to make arrangements for the meeting. Concerns were raised by members about the need for substitutions generally at Scrutiny Board/Scrutiny Panel or Select Committee and the Monitoring Officer agreed to provide information on the position at other local and national Councils. This is shown in the benchmarking spreadsheet at **Appendix 8** in column C.

The recommendation is that we retain the current position on substitutes, this is very similar to that in other authorities and has been working well. Where the specific Committee requires training the substitute must also have had that training to be eligible to be a substitute.

b. Call-in – Who can call-in a decision

Proposals were put forward to change the persons who have the power to call-in a decision, to include at least three members who are not members of the Council.

Members questioned this number and had differing views about whether three was appropriate and practical. The Monitoring Officer explained that his professional opinion three was an appropriate and usual number. He agreed to provide information on the position at other local and national Councils. This is shown in the benchmarking spreadsheet at **Appendix 8** in column B.

The recommendation is that we retain the proposed number on call-ins and that if this proves to cause problems then a further report is brought back to vary that number or provide other checks and balances but that the presumption should be in favour of a wider call-in ability, as proposed in the suggested change.

c. Full Council Meeting Procedure Rules – Questions from members of the public

Minor updates were proposed in relation to questions from members of the public which were not in issue. Members did however raise questions about the process generally, including how arrangements would be communicated to members of the public. The Monitoring Officer explained that there was a protocol which can be updated and shared with members. This is attached as **Appendix 9**.

The recommendation is that we adopt this process from the next Council meeting (namely that in December).

d. Full Council Meeting Procedure Rules – Public questions

Members also enquired whether the definition of those persons entitled to raise questions at Council meetings could be expanded to include persons who own businesses in the City, or who invest in the City, but who are not residents. Members also asked to see the protocol of

The Monitoring Officer was of the view that it would be unusual to have such a wide definition and agreed to provide information on the position at other local and national Councils before the matter is discussed further. This information is shown in the benchmarking spreadsheet at **Appendix 8** in column E.

The recommendation is that we focus questions on members of the public who are residents, as the time allowed for questions is limited to 15 minutes under the constitution and to broaden the scope to more than just residents would potentially restrict the number of residents of the City able to ask questions.

e. Full Council Meeting Procedure Rules – Right of Reply

No changes were proposed in relation to the right of reply, but the Monitoring Officer was asked to consider the position at other Councils on this point for further consideration. Relevant information is attached at **Appendix 8** in column D. It was suggested that a having a right of reply on questions (as there are on motions, reports, and the Leader's report) could help bring good order to meetings.

The recommendation is that we retain the current position, as no other authority currently has the ability to challenge the answer to a question given by another councillor other than the process already in our rules of asking a supplementary question. Questions are intended to be restricted to questions and answers and introducing a further right of reply from the person posing the question would lead to a debate (with the Councillor giving the answer no doubt wishing to reply back to the right of reply).

f. Disclosure and Barring Service

Proposals were put forward to remove from the Code of Conduct for Members all reference to DBS and criminal records checks, and to replace it with a separate document. There was concern that the new document did not require an Enhanced check to be carried out on all members, as this was considered necessary in light of the work undertaken within the community. The Monitoring Officer explained that this

arrangement was in accordance with the law and guidance and he was asked by members to write to the Secretary of State to ask for the position to be changed. A briefing note for members which outlines the rules, as well as proposed letter, are attached as **Appendix 10**.

The recommendation is that we note the current legal position as set out in appendix 10 and therefore adopt the current proposed policy but at the same time ask the Cabinet Member to write the proposed letter on behalf of the Council seeking a change to the law.

g. Planning Committee decisions

Members were asked to consider a change to the functions delegated to Planning Committee, to remove the requirement for then to consider a Certificate of Lawfulness that relate to land in (or proposed to be in) the ownership of the Council. Instead, it is proposed that such decisions are considered instead by the Monitoring Officer in consultation with the Chair of the Planning Committee.

Members asked for information to help them understand the number of cases that would be dealt with under this new procedure, and the Head of City Planning Stephen has confirmed that he knows of only one such application over a period of many years that would fall within this category.

It was further asked that there be reporting through to Planning Committee on the numbers and broad locations of Lawful Development Certificates made, and the types of applications.

The recommendation is that we proceed with the proposed change and also ensure that regular reports are taken to the Planning Committee on issuing of Lawful Development Certificates.

3.3 Minor drafting recommendations were made by members (relating to terminology used) a which have been incorporated into **Appendix 7a**.

4.0 Financial implications

4.1 There are no direct financial implications arising from this report.

[CN/18102023/A]

5.0 Legal implications

5.1 The Council is required by Section 37 of the Local Government Act 2000 to prepare and publish a Constitution which contains its standing orders relating to decision-making,

finance and contracts. The Council is also required to keep its Constitution updated. As noted above, Part 2, Article 14 of the Constitution authorises the Monitoring Officer to make amendments which more accurately reflect legislative and other changes. The proposed changes ensures that the Council meets its duties.

[DP/27092023/A]

6.0 Equalities implications

- 6.1 The Council must, in the exercise of its functions, have due regard to the need to:
- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.2 The Constitution seeks to ensure that, in its decision-making and its operations, the Council fully complies with the public-sector equality duty.

7.0 All other Implications

- 7.1 There are no other implications arising from the recommendations in this report.

8.0 Appendices

- 8.1 The Appendices attached show the proposed amendments and/or the final proposed version of relevant parts of the revised Constitution.

Relating to original proposals at the meeting on 5 October 2023

- Appendix 1:** Scrutiny Board and Call-in (including new form)
- Appendix 2:** Electronic sealing and signing
- Appendix 3:** Health and Wellbeing Together Board Terms of Reference
Appendix 3a: Proposed amended version of Health and Wellbeing Together Board Terms of Reference
- Appendix 4:** Full Council meeting Procedure Rules
Appendix 4a: DRAFT informal protocol – member behaviour at meetings
- Appendix 5:** Individual Executive Decision Notices (IEDNs) and call-in
Appendix 5a: DRAFT guidance for members and officers - IEDNs

- Appendix 6:** Miscellaneous (Disclosure and Barring Service (DBS) for members, Councillors' Allowance Scheme, Planning Committee decisions.)
- Appendix 6a:** Councillor DBS policy
- Appendix 7:** Officer delegations
- Appendix 7a:** Part 3 delegations – proposed amended version

Relating to additional information in response to members' questions

- Appendix 8:** Spreadsheet showing relevant arrangements in other Councils
- Appendix 9:** Protocol for Full Council Meeting public questions
- Appendix 10:** Briefing Note – Councillor DBS checks