



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Council

1 March 2023

Report of Councillor Linda Wooten,
Cabinet Member for Corporate
Governance and Licensing

Proposed Amendments to the Constitution

Report Author

Graham Watts, Assistant Director of Governance and Monitoring Officer

 Graham.watts@southkesteven.gov.uk

Purpose of Report

To consider a number of proposed amendments to the Council's Constitution.

Recommendations

That Full Council approves:

1. The addition of a new paragraph under the Budget and Policy Framework Procedure Rules in Part 4 (Rules of Procedure) of the Constitution regarding proposed amendments to the budget or proposed alternative budgets, as set out in paragraph 3.3 of the report.
2. The reduction of four Overview and Scrutiny Committees to three Overview Scrutiny Committees and adoption of the revised version of 'Article 6 – Overview and Scrutiny Committees' set out in Appendix A, with effect from 4 May 2023.
3. The abolition of the Companies Committee, with oversight of the Council's companies falling within the remit of the relevant Overview and Scrutiny Committee, with appointments to company Boards falling within the remit of the Governance and Audit Committee, with effect from 4 May 2023.
4. The abolition of the Constitution Committee and role and responsibilities being added to the remit of the Governance and Audit Committee and adoption of the revised version of 'Article 10 – Governance and Audit Committee' set out at Appendix B, with effect from 4 May 2023.

5. The creation of a Standards Committee and adoption of a new Article entitled 'Standards Committee', which sets out its terms of reference, with effect from 4 May 2023.
6. The renumbering of Articles under Part 2 of the Council's Constitution to facilitate recommendations 1 to 4 above, with effect from 4 May 2023.
7. The addition of a delegation under the Officer Scheme of Delegation in Part 3 (Responsibility for Functions) of the Council's Constitution regarding the introduction of new fees and charges, as set out in paragraph 3.7 of the report.
8. The addition of a definition regarding the duration of a short-term lease in respect of an existing delegation within the Officer Scheme of Delegation in Part 3 (Responsibility for Functions) and further clarification in respect of the delegation, as set out paragraphs 3.8 to 3.11 of the report.
9. The addition of an existing delegation within the Officer Scheme of Delegation in Part 3 (Responsibility for Functions) granted by Cabinet on 7 December 2021 with a variation in respect of the disposal of assets, as set out in paragraphs 3.12 to 3.14 of the report.
10. The addition of a rule in Part 4 (Procedure Rules) in the Council Procedure Rules regarding the appointment of Members to fill vacancies on Committees, as set out in paragraph 3.17 of the report.

Decision Information	
Does the report contain any exempt or confidential information not for publication?	No
What are the relevant corporate priorities?	High performing Council
Which wards are impacted?	All

1. Implications

Taking into consideration implications relating to finance and procurement, legal and governance, risk and mitigation, health and safety, diversity and inclusion, safeguarding, staffing, community safety, mental health and wellbeing and the impact on the Council's declaration of a climate change emergency, the following implications have been identified:

Finance and Procurement

1.1 There are no significant financial implications arising from this report.

Completed by: Richard Wyles, Chief Finance Officer

Legal and Governance

1.2 Legal and governance implications are reflected in the body of the report.

Completed by: Graham Watts, Assistant Director of Governance and Monitoring Officer

2. Background to the Report

2.1 A number of amendments to the Council's Constitution are proposed in this report. The circumstances surrounding each proposition are set out in the report.

3. Key Considerations

Scrutiny Review – consequential amendments to the Constitution

3.1 A review of the Council's overview and scrutiny function was undertaken by the Centre for Governance and Scrutiny and thirteen recommendations were included in the final report which was submitted to the Council. The Governance and Audit Committee at its meeting on 30 January 2023 endorsed an action plan to address the recommendations set out in the report and in implementing the action plan a number of specific actions require amendments to the Constitution.

Review of the current approach to financial scrutiny

3.2 In reviewing the Council's processes for budget setting, as recommended in the Centre for Governance and Scrutiny's report, risks were identified in respect of the submission of amendments to the budget or submission of alternative budgets. Late notice of such submissions could mean that the Chief Finance Officer and their team has insufficient time to consider whether the propositions are financially sound or represent a balanced budget, which is a statutory requirement of their role as the Council's Section 151 Officer.

3.3 It is therefore proposed to introduce a new paragraph 4.2 under the Budget and Policy Framework Procedure Rules in Part 4 of the Constitution, to read:

“Any amendments to Cabinet's proposals, or the submission of an alternative budget, must be considered by the Chief Finance Officer five working days prior to the day of the budget meeting of Full Council to ensure that proposals are financially sound and represent a balanced budget. By exception, amendments considered as minor which the Chief Finance Officer deems as financially sound and representing a balanced budget may still be proposed”.

Committee structure

3.4 The Centre for Governance and Scrutiny recommended changes to the Council's committee structure in respect of its Overview and Scrutiny Committees. The

Action Plan endorsed at the Governance and Audit Committee included a proposal to change the Council's wider committee structure, based upon the following:

- A reduction from four Overview and Scrutiny Committees to three Overview and Scrutiny Committees. A revised version of 'Article 6 – Overview and Scrutiny Committees' in Part 2 of the Constitution, setting out the names and remit for the three new Committees is outlined in **Appendix A**
- The abolition of the Companies Committee and responsibility for oversight of the Council's companies to fall under the responsibility of the respective Overview and Scrutiny Committee, as reflected in **Appendix A**, with appointments to the Boards of companies falling within the remit of the Governance and Audit Committee
- The abolition of the Constitution Committee and its role and responsibilities being reallocated to the Governance and Audit Committee. A revised version of 'Article 10 – Governance and Audit Committee' is outlined in **Appendix B**
- The addition of a Standards Committee, with its terms of reference set out in a new Article titled 'Standards Committee' as outlined in **Appendix C**

3.5 Articles relating to the Companies Committee and Constitution Committee and any other references within the Constitution are proposed to be removed, with the renumbering of Articles within Part 2 of the Constitution to accommodate this and the inclusion of a new Article for the Standards Committee, as set out above.

Fees and charges

3.6 There is currently no provision within the Council's approval processes to consider the introduction of new fees and charges between meetings of Full Council or outside of the Council's budget setting process. There may be occasions when the introduction of a new fee or charge is necessary in-year and cannot wait for the next scheduled meeting of Full Council for approval.

3.7 A new section is proposed to be added under Part 3 of the Constitution (Responsibility for Functions) under paragraph 3.3.9 of Part 3(c) (Delegated Powers to Officers) titled 'fees and charges' to read as follows:

Function	Delegation	Officer(s) Granted Delegation
Fees and Charges	<p>To submit a report to Cabinet seeking approval of a new fee or charge in circumstances when the introduction of a fee or charge is necessary and cannot reasonably be considered as part of the Council's budget setting process</p> <p>If agreed by Cabinet, to provide reasonable notice to service users before they are implemented, together with clear advice on any discounts or concessions that will be available.</p>	Chief Executive, relevant Director, Assistant Director and any other officers they authorise in writing as being appropriately qualified and trained, in consultation with the Section 151 Officer

Definition of short-term lease

- 3.8 Paragraph 25(f) of the Council's Scheme of Delegation states that officers have delegation "to arrange short term lettings of land not immediately required for other purposes at rent/licenses fees fixed by the Section 151 Officer".
- 3.9 There is no definition within the Constitution that prescribes or defines the duration of a short-term lease.
- 3.10 Historically, the Council has set a precedent for short-term leases being less than seven years. It is therefore proposed that paragraph 25(f) be amended to reflect that short-term leases are defined as leases up to seven years in duration.
- 3.11 Further clarity is required in this part of the Constitution as reference is made solely to land, whereas it is considered that this delegation should also apply to property. It is proposed that the words 'and property' be added to the reference to land.

Disposal of General Fund Assets

- 3.12 At its meeting on 7 December 2021, Cabinet approved the following delegation to the Director of Housing and Property, in consultation with the Deputy Leader of the Council, Chief Executive, Section 151 Officer and Monitoring Officer, to dispose of General Fund Assets up to a value of £2 million, exclusive of any applicable VAT, subject to legal and valuation advice.

- 3.13 For completeness, it is proposed to include this delegation as part of the Officer Scheme of Delegation under Part 3 of the Constitution (Responsibility for Functions) under paragraph 3.3.9 of Part 3(c) (Delegated Powers to Officers). The Officer Scheme of Delegation is written in such a way that there is contingency should individual post holders be unable to act. It is therefore proposed that delegated power be extended to the Chief Executive or the Director of Housing and Property.
- 3.14 It is acknowledged that any Member of Cabinet can be appointed Deputy Leader of the Council, whereas the relevant Cabinet Portfolios would be those with responsibility for finance and property. It is further proposed that this delegation be amended to include specific reference to the Cabinet Member responsible for Finance and Cabinet Member responsible for Property as opposed to the Deputy Leader of the Council.

Vacancies on Committees

- 3.15 There is currently no stipulation that vacancies on the Council's committees need to be filled, with the substitute provision able to be used to replace a political group's vacancy on a committee.
- 3.16 A defined membership for a committee promotes continuity and removes any confusion associated with which Councillors act on a particular committee.
- 3.17 It is proposed that the following paragraph be added to Council Procedure Rules:
- “Vacancies on committees should be filled at the next available meeting of Full Council and until that meeting takes place the provision of substitutes will be permitted. If a vacancy on a committee is not filled at the next available meeting of Full Council, the provision of substitutes will not be permitted.”

4. Other Options Considered

- 4.1 To retain the existing version of the Constitution, unamended.
- 4.2 The Constitution Committee is invited to recommend any amendments to the changes proposed as part of this report or suggest additional amendments to the Constitution for consideration by the Committee.

5. Reasons for the Recommendations

- 5.1 Recommendations 1 to 6 reflect actions endorsed by the Governance and Audit Committee as part of the Scrutiny Review Action Plan.
- 5.2 Recommendations 7 to 10 are considered to strengthen the Council's governance arrangements.

6. Consultation

- 6.1 In respect of the Scrutiny Review, consideration to the draft Action Plan was considered by the Governance and Audit Committee on 28 September 2022 and 30 January 2023 together with a workshop for Councillors which was held on 30 November 2022.
- 6.2 The Constitution Committee considered this report at this meeting on 14 February 2023 and made a resolution to formally recommend to Full Council approval of all recommendations set out in the report, apart from recommendation 2 in respect of the proposed reduction of four Overview and Scrutiny Committees to three Overview and Scrutiny Committees.
- 6.3 The following points were noted in favour of the proposal set out in recommendation 2 during debate at the Constitution Committee on 14 February 2023:
- The Scrutiny Review report from the Centre for Governance and Scrutiny recommended a reduction to two Overview and Scrutiny Committees. In reviewing the Council's structure, it was felt that such a reduction would be a step too far, so it was proposed that the existing four committees be reduced to three
 - The membership of the proposed Finance, Economy and Environment Overview and Scrutiny Committee in terms of the number of Councillors on the Committee was recommended to reflect the existing Finance, Economic Development and Corporate Services Overview and Scrutiny Committee as a committee of nine, with the remaining Overview and Scrutiny Committees retaining their membership of seven Councillors. This was in acknowledgement that the Finance, Economy and Environment Overview and Scrutiny Committee had a slightly larger remit, having incorporated the role and responsibilities of the current Environment Overview and Scrutiny Committee
 - Training for all Overview and Scrutiny Committee Members would be delivered by the Centre for Governance and Scrutiny and chairmanship training would be delivered by the Association of Democratic Services Officers as part of the induction programme following the District Council elections in May 2023. The scrutiny training would emphasise and reiterate the role of Overview and Scrutiny Committees, demonstrate ways in which scrutiny could be most effective and focus on key outcomes to be achieved from items coming before Overview and Scrutiny Committees. This could include greater use of Task and Finish Groups. Chairmanship training, amongst other aspects, would focus on work programming. It was envisaged that the outcomes of this training would support the proposed reduction from four Overview and Scrutiny Committees to three.

- 6.4 The following points were noted against the proposal set out in recommendation 2 during debate at the Constitution Committee on 14 February 2023:
- The new Council following the elections in May 2023 should be deciding upon its committee structure, rather than a decision being taken at this stage
 - The agendas and work programmes for the existing four Overview and Scrutiny Committees were already very full, with meetings usually lasting near to three hours in duration. Removing a committee and amalgamating its work with other committees would place undue pressure on their workloads
 - The terms of reference of the proposed Finance, Economy and Environment Overview and Scrutiny Committee, incorporating the full responsibilities of the existing Environment Overview and Scrutiny Committee as set out in Appendix A, was significant and too much for a single committee when compared to the other committees in the proposed structure
 - The Removal of an Overview and Scrutiny Committee from the committee structure removed a further opportunity to hold Cabinet to account
 - Task and Finish Groups were not necessarily held in the public domain
 - There may be topics between the three Overview and Scrutiny Committees that were cross-cutting and it not being clear which Committee was responsible
 - The list of topics under the responsibility of each Overview and Scrutiny Committee was not exhaustive
- 6.5 The vote at the Constitution Committee in respect of recommendation 2 was tied. Rather than use a casting vote, the Chairman of the Constitution Committee agreed that the matter should be considered by Full Council without a recommendation from the Committee.
- 6.6 Recommendation 7 sets out a proposed delegation regarding the introduction of new fees and charges. Since the meeting of the Constitution Committee held on 14 February 2023 an omission has been identified regarding consultation with the Section 151 Officer. To ensure compliance with their statutory duties, the Section 151 Officer would need to be consulted prior to any officer exercising the proposed delegation to introduce a new fee or charge. This consultation process was not reflected in the wording of the delegated authority considered by the Constitution Committee. The wording under the 'officer(s) granted delegation' section of the table at paragraph 3.7 has been amended to reflect this and is therefore slightly different to the version considered by the Constitution Committee. As this amendment does not substantially change the nature of the delegation and the required amendment to the Constitution, Full Council is still able to approve the recommendation in this report without this being reconsidered by the Constitution Committee.

- 6.7 No further consultation on the other recommendations contained within this report has been undertaken.
- 6.8 Amendments to the Constitution are required to be considered by the Constitution Committee prior to submission to Full Council for final decision.

7. Appendices

- 7.1 Appendix A – Article 6 (Overview and Scrutiny Committees)
- 7.2 Appendix B – Article 10 (Governance and Audit Committee)
- 7.3 Appendix C – New Article for the Standards Committee