

Agenda item 8
Council Issues

1. Changes to the Constitution

- 1.1 A number of changes to the constitution are proposed. These have been discussed with leaders of all political groups to make the constitution more robust or simplify matters. The changes in paragraphs 1.12 onwards reflect management or structural changes, or decisions taken by the leader. A version of the constitution showing the changes tracked is available by emailing full.council@essex.gov.uk.

(a) Order of Speeches

- 1.2 It is proposed to amend paragraph 16.9.4 of the constitution to allow the seconder of any motion to choose whether they speak at the beginning or end of the debate. Currently this choice only applies to the seconder of amendments.

(b) Incompatible Amendments to Motions

- 1.3 It is proposed to amend the constitution to deal with the problem where multiple amendments are put forward in advance which are not compatible with one another. Even if the first amendment is passed, the second still has to be put to the vote even if it would be of uncertain effect.
- 1.4 It's proposed to amend paragraph 16.9.8 of the constitution so that if an amendment has been passed meaning that one or more subsequent amendments are incompatible with the amended motion then the Chairman may either

- (a) give the mover of the amendment the opportunity to revise their amendment (without introducing new issues)
- (b) decide that amendment may not be put to the vote.

This will lead to greater clarity when dealing with amendments.

(c) Accepting amendments

- 1.5 It is proposed to allow the mover of an amendment the opportunity to 'accept' amendments at the start of the debate. If an amendment is accepted the amended motion becomes the substantive motion and there will be no further speeches on the amendment.
- 1.6 This requires a change to paragraph 16.9.8 of the constitution.

(d) Financial Statements

- 1.7 It is proposed to introduce a right for the Cabinet Member with responsibility for Finance to make an Autumn Budget Statement at the October meeting of the Council. That will be in addition to any executive statement made at the meeting. It is recommended that a new paragraph 16.11.1(viii) is inserted into the constitution to facilitate this.
- 1.8 It is also proposed that the Leader may ask the Cabinet Member for Finance to make either or both of the two speeches traditionally made by the Leader at the budget meeting. It is proposed that if this happens then right to make untimed speeches will be transferred from the Leader to the Cabinet Member for Finance. This would entail an amendment to paragraph 16.9.6(iii)(a) of the Constitution.

(e) Suspension of written questions at council – pilot

- 1.9 Following discussions between the Leader and the leaders of other registered political groups it is proposed operate a pilot programme where Members may ask formal written questions to Cabinet Members and Committee Chairmen at any time with the answer being published online. This is aimed at making the facility of asking a published question available all year round rather than only at five meetings each year. That said members have always been free to and encouraged to raise items of concern with Cabinet Members outside the formal process. It's intended that the year round programme will replace written questions being reported to council. It's proposed to suspend written questions at the February and May meetings, with a report being brought to the May 2022 meeting which agrees a longer term position. We will write to all members with details about how the new process will work. Written questions will resume at the July 2022 meeting unless there is a further decision by council to make the new process permanent or to extend the pilot.

(f) Changes to outside bodies

- 1.10 The scheme of members allowances includes a long list of outside bodies. Attending a meeting of a listed body as the Council's representative counts as an 'approved duty' for the purpose of the scheme of allowances. The list is long and difficult to keep up to date as some bodies are informally created (and therefore may be informally suspended or disbanded) and others may not always invite ECC to nominate a member – and the Council often does not have the right to make a nomination.
- 1.11 The list of outside bodies has changed at every recent meeting. It's proposed that in future the list should be reviewed by Council at its annual meeting and that the Monitoring Officer be given delegated authority to make in-year changes to the list after consulting the Leader and the Chairman. Any changes would be reported to Council annually and to political group leaders at the time that the change is made.

(g) Association of South Essex Local Authorities Joint Committee

- 1.12 On 27 October 2021 the Leader took a formal decision that the County Council will join the Association of South Essex Local Authorities Joint Committee. This is a joint arrangement and needs to be formally recorded in the Constitution. The Joint Committee has no delegations with respect to ECC services but it does have authority to spend its budget, some of which is ECC money. Accordingly the Joint Committee needs to be recorded in the constitution.

(h) Changes to the scheme of delegation resulting from the creation of new posts

- 1.12 The departure of the Executive Director for Place and Public Health has led to a proposed changes in the structure of the Council. This post is to be replaced with two Executive Director Posts with the Director, Public Health, Wellbeing and Communities reporting directly to the Chief Executive, with a 'dotted line' accountability to the Executive Director. The two new posts are being recruited to. They are entitled 'Executive Director, Economy, Investment and Public Health' and 'Executive Director, Climate, Environment and Customer Services'.

Recommendations:

That the following amendments to the constitution be made with effect from the close of this meeting:

- (1) Amend paragraph 16.9.4 of the constitution to read:

16.9.4 Seconder's speech and order of speeches

- (i) The following rules apply to determine when the Seconder of a motion may speak when a motion is being debated:
- (a) a Member who has seconded a motion other than the motion to adopt the council's budget or a motion arising from a report, will be permitted to speak at the start of the debate or, if that member declares an intention to do so, at the end of the debate on the motion;
 - (b) a Member who has seconded the motion to adopt the council's budget or a motion arising from a report budget motion, will be permitted to speak at the start of the debate or, if that member declares an intention to do so, at the end of the debate on the motion, immediately before the summing up speech;
- (ii) The order of speeches at the end of the debate is:
- (a) seconds of amendments not moved by a Cabinet Member who have not already spoken, followed by

- (b) seconders of amendments moved by a Cabinet Member who have not already spoken, followed by
- (c) the seconder of the substantive motion if they have not already spoken, and
- (d) on a motion to adopt the Council's budget or a motion arising from a report, the proposer or Leader as provided for elsewhere in the constitution'

(2) Amend paragraph 16.9.6(iii)(a) to read:

- '(a) The Leader of the Council or, at the discretion of the Leader of the Council, the Cabinet Member with responsibility for Finance, when making the budget speech and summing up the debate – no time limit;'

(3) Amend paragraph 16.9.8 of the constitution to read:

'16.9.8 Amendments to motions

- (i) Amendments may be moved in accordance with this standing order if they are relevant to the motion and propose changes to the motion by either:

- (a) changing the motion so that it refers a matter to a Committee, the Cabinet or a Portfolio Holder for consideration or reconsideration;
- (b) to leave out words;
- (c) to leave out words and insert or add others; or
- (d) to insert or add words;

but such omission, insertion or addition of words shall not have the effect of introducing a new subject matter into the motion before the Council or negating the motion.

- (ii) No amendment may be moved unless:

- (a) it has been put in writing and handed to the Head of Democracy and Transparency by no later than 12:00 midday on the working day before the meeting in a format to be specified by the Monitoring Officer; or
- (b) the Chairman agrees that there are exceptional reasons why (i) could not have been complied with.

- (iii) At any time before the conclusion of their speech the mover of a motion may indicate to the Chairman that they accept any amendment which has been moved and, if an amendment is accepted

- a. the motion shall be treated as having been moved as amended by the accepted amendment; and

- b. the amendment motion shall be considered to have been withdrawn.
 - (iv) Subject to (v) below, only one amendment may be moved and discussed at any one time. No further amendment shall be moved until the amendment under discussion has been disposed of.
 - (v) The Chairman may permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the Council's business.
 - (vi) If an amendment is not carried, further amendments to the original motion may be moved in accordance with this Standing Order.
 - (vi) If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the substantive motion.
 - (vii) Where an amendment is carried or accepted and there are one or more further amendments which have not been disposed of which are not compatible with the motion as amended, the Chairman must either:
 - (a) give each proposer of an amendment the opportunity to revise their amendment in a way that the Chairman agrees makes it compatible with the principal changes effected by the carried or accepted amendment; or
 - (a) decide not to put the amendment to the vote if the Chairman considers the amendment cannot reasonably be made compatible.
 - (viii) After an amendment has been carried, the Chairman will, if requested to do so by Members, read out the amended motion before accepting any further amendments for debate, and, if there are none, put the amended motion to the vote.'
- (4) Insert a new paragraph 16.11.1(viii) into the constitution to read:
- '(viii) In addition, at one meeting each year, normally the meeting taking place in the autumn, a second Executive Statement relating to the Council's financial position shall be permitted to be made by the Cabinet Member with responsibility for Finance.'
- (5) Insert a temporary paragraph at the start of paragraph 16.12 of the constitution (to expire at the close of the annual meeting in 2022:
- 'Standing orders 16.12.1 – 16.12.4 are suspended until after the annual meeting of the Council taking place in 2022.'**
- (6) Insert a new paragraph at the end of section 15.3.8 (Delegations to the Director, Legal and Assurance:

(xiv) To amend the list of approved bodies at appendix 3 to part 26 of the constitution after consulting the Leader and the Chairman of the Council.

PROVIDED THAT any use of this delegated power shall be reported to the next Annual Meeting of Council.'

(7) In the list of joint committees in paragraph 13.3 of the constitution insert at the end:

'Association of South Essex Local Authorities Joint Committee'

(8) Add the constitution of the Association of South Essex Local Authorities Joint Committee (appendix 1 to this report) at the end of Appendix 4 to the Constitution.

(9) Replace paragraph 15.3.3 of the constitution with the text below and renumber remaining parts of 15.3 and agree that as a transitional provision, the authorisations issued by the Executive Director, Place and Public Health continue to have effect until replaced by authorisations issued by holders of the new posts.

'15.3.3 To the Executive Director, Economy, Investment and Public Health

- (i) To exercise the Council's functions relating to the economic development of Essex and its residents.
- (ii) To exercise the Council's powers with respect to regulatory services and licensing and decisions in connection with permits, regulations, permissions or certificates.
- (iii) To exercise the Council's functions as a local planning authority except for:
 - (a) approval of planning applications where objections are raised by other Local Authorities or where there are more than two individual representations raising planning related objections;
 - (b) approval of planning applications where it has been determined that an environmental impact assessment is required;
 - (c) approval of planning applications where there are objections and the Chairman of the Development and Regulation Committee determines, in consultation with the Chief Planning Officer, that the application should be determined by the Committee; and
 - (d) approval of planning applications which amount to a significant departure from the development Plan.

- (iv) To exercise the Council's powers with respect to property and facilities management.
- (v) To exercise the Council's powers with respect to towns and village greens.

15.3.4 To the Executive Director, Climate, Environment and Customer Services

- (i) To exercise the Council's functions relating to the promotion of tourism.
- (ii) To exercise the Council's functions relating to highways, transportation and traffic other than determination of applications or proposals for modification of the definitive map and statement of public rights of way.
- (iii) To exercise the Council's functions relating to recycling and the disposal of waste.
- (iv) To exercise the Council's functions relating to improving the environmental performance and wellbeing of Essex including flood management.
- (v) To exercise the Council's functions relating to
 - (a) Registration of Births, Deaths and Marriages
 - (b) The Coroner's Service

15.3.5 To the Director, Well-being, Public Health and Communities

- (i) To exercise the Council's functions relating to sport and physical activity.
- (ii) To exercise the Council's functions as a trading standards (weights and measures) authority, as a health and safety enforcement authority, as a food authority, all powers to protect animal health and welfare and all regulatory services relating to the protection of consumers and regulation of businesses.
- (iii) To exercise the Council's functions relating to unlawful encampments.
- (iv) To exercise the Council's functions relating to the prevention and reduction of crime and disorder.
- (v) To exercise the Council's powers to take steps to improve the health of the public and exercise powers under public health legislation.