

Review of the Constitution

1. Review of the Constitution

Introduction

Article 1.5 of the Constitution relates to the duty to monitor and review the Constitution. It provides for the Monitoring Officer to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect, and to ensure that appropriate amendments are recommended as and when necessary for the purpose of updating or improving the Constitution. The Monitoring Officer shall review the Constitution at least, but not limited to, annually with a view to recommending any such amendments to the annual meeting of the Council. Any minor amendments and routine updating of the Constitution shall be the responsibility of the Monitoring Officer.

A number of changes have been made to the Constitution since May last year in response to changes to the composition of the Council since the 2013 Elections, the latest being changes to the Council's Standing Orders in relation to the procedure for dealing with written motions at Council. Consequently, the Monitoring Officer does not foresee the need for wholesale changes to the Constitution at this point. The list of potential changes to the Constitution covers minor amendments needed to provide greater clarity, reflect recent changes in legislation, changes to officer titles and to committees. It also includes proposals for public question time at meetings.

These changes have been reviewed by a Member Reference Group Chaired by the Chairman of the Council and comprising the Vice-Chairman and Group Leaders or their nominees.

Recommended:

That the changes to the Constitution set out below be approved.

1. Amendment to Article 4 (Officers)

The change is needed to recognise that the Scrutiny Officer is now the Scrutiny and Corporate Governance Manager. The proposed amendment is shown below:

The wording beneath the table is new and will permit changes to officer titles as and when agreed by the Chief Executive.

4.4 Statutory Officers

Full Council has designated the following posts as shown:

Post	Designation
Chief Executive	Head of the Paid Service under Section 4 of the Local Government and Housing Act 1989.
Executive Director for Corporate Services	Chief Finance Officer appointed under section 151 of the Local Government Act 1972
Executive Director for People Commissioning	Director of Children's Services appointed under Section 18 of the Children Act 2004 and Director of Adult Social Services appointed under section 6 of the Local Authorities Social Services Act 1970
Director of Corporate Law and Assurance	Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
Director of Commissioning: Healthy Lifestyles	Director of Public Health under section 73A of the National Health Service Act 2006
Scrutiny and Corporate Governance Manager	Scrutiny Officer under Section 9FB of the Local Government Act 2000.

The Post titles as shown in the first column of the above table may be varied by the Chief Executive.

2. Amendment to Article 5 and Access to Information Procedure Rules

The definition of a Key Decision is contained in Article 5. However, there is further clarification of the definition contained in paragraph 19.14 of the Access to Information Procedure Rules. This is not intuitive and means that only those in the know would think to look for the further clarification elsewhere in the Constitution. It is therefore proposed that the definition is consolidated in Article 5 as set out below. Paragraph 19.14 would then be deleted.

“5.3.2 Key Decisions

A “Key Decision”, as set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information)(England) Regulations 2012, is a decision of the Executive which is likely either:

- (i) to result in the Council incurring expenditure or making savings which are in excess of £500,000, except as otherwise determined under financial regulations; **or**
- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions.

All other decisions shall be considered as non-Key Decisions.

A Key Decision will include those decisions which will have a material effect on the Council’s services, including but not limited to:

- (i) an existing service or access to an existing service being substantially expanded or reduced or ceasing altogether or a new service being proposed;
- (ii) a service which is currently provided in-house by the Council being outsourced;
- (iii) a partnership being entered into with a third party which involves an element of risk share or transfer;
- (iv) a decision that involves any new policy or strategy or which forms part of the development of or a change to the Policy Framework or the Budget;
- (v) a decision to exercise the Council’s power to trade or charge for discretionary services; and
- (vi) consideration of any matter which will result in a recommendation to full Council.

For the avoidance of doubt the following shall not be a Key Decision:

- (i) Routine money market transactions; and
- (ii) In relation to the letting of contracts, and where the Key Decision is the proposal to let the contract, subsequent decisions in relation to any

procurement process from inviting tenders up to and including awarding the contract to a particular contractor are not then Key Decisions.

A decision taker may only make a Key Decision in accordance with the requirements of the Cabinet Procedure Rules and the Access to Information Procedure Rules set out in paragraph 19.13, contained within Part 4 of this Constitution.”

3. Amendment to Article 8 (Council Committees)

It is proposed to amend Article 8.1.7 to update the terms of reference of the Investment Steering Committee as requested by the Essex Pension Fund Board to include the approval and review of the content of the Pension Fund Treasury Management Strategy.

Since 2010, the Pension Board has been asked to approve the annual Pension Fund Treasury Management Strategy. The Investment Steering Committee received a report highlighting that, in the view of officers and advisers, and following consultation with the Chairman, there was merit in changing arrangements so that the Pension Fund Treasury Management Strategy is approved by the Committee. The rationale is that cash management arrangements have an implicit alignment with Investment Strategy. The Board recommended to Council that the Terms of Reference of the Investment Steering committee be extended to include the following:

“To approve and to review annually the content of the Pension Fund Treasury Management Strategy.”

It is also proposed that the name be changed to the “Pension Fund Investment Steering Committee”.

4. Amendment to Article 12 (Finance, Contracts and Legal Matters)

It is a statutory requirement for the Council to make contract standing orders. These must form part of the Constitution. The minimum legal requirement for standing orders is to say that some contracts are subject to competition and some can be exempted in special circumstances.

At present the County Council has no such standing orders, although article 12.2 of the constitution says:

12.2 Contracts

Every contract made by the Council will comply with the Procurement Procedure Rules referred to in the Code of Corporate Governance.

Whilst this is a simple provision, it means that the Council has no control over what is in the Procurement Rules. Further, it is not clear who is authorised to make or change the Procurement Rules which causes uncertainty.

The current Procurement Rules do contain very extensive requirements about procurement activity and are at least as strict as those used by other authorities.

It is proposed to replace paragraph 12.2 with the following wording. This will ensure that the Council is complying with statutory requirements as well as providing the Council with an opportunity to set out requirements about Procurement Rules and ensuring that there is a clear accountability for the production of the Procurement Rules and allow for the Council to ensure that its procurement function is able to operate in a truly agile way as we become a commissioning-led organisation.

12.2 Contracts

12.2.1 This paragraph contains the Council's statutory standing orders about the making of contracts in accordance with section 135 of the Local Government Act 1972.

12.2.2 All those undertaking procurement activity for or on behalf of the Council are required to act in the best interests of the Council and with high standards of probity.

12.2.3 The Chief Financial Officer must from time to time issue Procurement Rules which shall be published on the Council's website. All contracts being entered into by the Council must comply with the Council's Procurement Rules.

12.2.4 The Procurement Rules must specify:

- (a) That there is no requirement to secure competition in contracts whose total value is below a value prescribed in the Procurement Rules ("the low value"*).
- (b) That contracts with a value which exceeds the low value but does not exceed the high value prescribed in the Procurement Rules ("the high value"*) shall be exposed to competition by means of inviting competitive quotations.
- (c) That contracts with a value which exceeds the high value but which do not exceed the threshold in (d) shall be let following public notice which invites competitive tenders and requiring that any tenders received are required to be kept unopened in a secure location until the expiry of the deadline for the receipt of tenders.
- (d) That contracts with a value which exceeds the relevant threshold prescribed in accordance with the relevant public procurement directive made by the European Union are required to be awarded in a manner which complies with those rules.
- (e) The circumstances in which the Council is permitted to purchase via a framework agreement.
- (f) That in addition to the exemptions from competition permitted under the preceding provisions of these standing orders, the Executive Director for Corporate Services or another officer authorised by him may grant a waiver from any requirement in these Standing Orders or in the Procurement Rules if he considers that the exemption is justified by special circumstances.

12.2.5 The Procurement Rules may also specify such further rules as the Chief Finance Officer may require.

12.2.6 The Chief Finance Officer may from time to time supplement Procurement Rules by providing guidance on best practice on the subject of procurement.

(*This limit will change from time-to-time but at the time of going to print the low value is £4,000 and the high value is £50,000.)

5. Amendment to Scheme of Delegation to Officers

It is proposed to amend paragraph 15.1.2 (h) to allow officers to take decisions where there have only been representations in support of a proposal. At the moment an officer cannot authorise the confirmation of an order where there have been any representations made to the proposed course of action, even where those representations are in support. In future, providing there were no objections then officers would be able to take the decision.

It is proposed that paragraph 15.1.2 (h) be amended as set out below:

- (h) Unless otherwise stated, this scheme does not authorise the confirmation of any order or grant of any permission, consent or licence or other determination where any response is received expressing opposition to the proposed course of action.

6. Amendment to Council Standing Orders

The Local Authorities (Standing Orders) (England) Regulations 2014 which came into force on 25 February provide for votes at key budget decision meetings to be recorded. The Regulations provide that authorities already operating executive arrangements shall modify their standing orders as soon as reasonably practical after the Regulations come into force. It is proposed that new Standing Orders 16.18 and 16.29.5 be inserted as follows:

“16.18 Voting on budget decisions

Immediately after any vote is taken at a budget decision meeting of the Council there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

For the interpretation of this rule please see Paragraph 16.29.5.”

“16.29.5 Definition of a budget decision

- (a) “budget decision” means a meeting of the Council at which it –
 - (i) makes a calculation (whether originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ of the Local Government Finance Act 1992; or
 - (ii) issues a precept under Chapter 4 of Part I of that Act, and includes a meeting where making the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting;
- (b) references to a vote are references to a vote on any decision related to the making of the calculation or the issuing of the precept as the case may be.”

7. Public Speaking at Council Meetings

The Leader indicated at Council that he is willing to entertain the possibility of public speaking at Council meetings.

Current provision

The Development and Regulation Committee, the Health Overview and Scrutiny Committee, the Health and Wellbeing Board and the Police and Crime Panel all have processes for allowing public speaking. For example:

- The Development and Regulation Committee has a detailed protocol for allowing the public to address the Committee on a planning matter which the Committee is being asked to decide.
- The Health Overview and Scrutiny Committee allows the public to ask questions at the start of a meeting on any health matter regardless of whether there is an item on the Agenda and without having to give advance notice. It does not automatically allow the public to comment on specific items on the Agenda though the Chairman of the meeting may permit them to do so.
- The Health and Wellbeing Board and the Police and Crime Panel both have procedures for allowing the public to ask any question relating to the work of the Board and the Panel regardless of whether there is an item on the Agenda, provided notice is given in advance. The procedures do not allow the public to comment on specific items on the Agenda.

It has been suggested that a process for public speaking should be permitted at meetings of Cabinet and Council and other Scrutiny Committees. If public speaking is to be permitted at Council meetings then this will need to be more formal.

It should be remembered that a chairman can always exercise their discretion with the agreement of the committee to allow a non-member of the committee to ask a question or address the meeting.

Proposed rules and protocols are as follows.

On a related topic, also included is a protocol on the use of media by public at meetings.

ESSEX COUNTY COUNCIL

PUBLIC SPEAKING AT CABINET AND SCRUTINY COMMITTEE MEETINGS

- The Council welcomes public interest in its business. Its formal meetings are open to the public, unless confidential business is being discussed, and the papers are published on the Council's website.
- The Council also welcomes public engagement and has therefore adopted the following procedure for public speaking at Cabinet and Scrutiny Committee meetings.
- County Hall, the Council Chamber and the Committee Rooms are accessible to wheelchair users and people with mobility disabilities and every reasonable assistance will be given to enable members of the public to ask a question.
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- For further information or advice contact the Council's Governance Helpline on 01245 435313 or email governancehelpline@essex.gov.uk

Public Speaking Procedure

(a) General

At the start of every Ordinary meeting of the Cabinet and Scrutiny Committees there shall be a period of up to 15 minutes to enable members of the public to make representations on an item on the Agenda for that meeting.

(b) Registration

On arrival and before the start of the meeting speakers should register with the member of staff collecting names specifying the agenda item they wish to speak on and the nature of their interest in the matter. The member of staff will explain what will happen and show speakers to the public seating area.

The member of staff will supply a list of speakers and suggested order of speaking to the Chairman at the start of the meeting.

(c) Addressing the meeting

The Chairman will call speakers by name and invite them to address the Committee. A speaker may be asked to sit at the main table where there will be a microphone to use.

(d) Length of statement

No statement should last longer than three minutes and speakers will be timed. For best effect views should be short and concise. Comments must be relevant to an item before the meeting. Any questions asked of the Cabinet or members must be asked within the 3-minute time limit.

(e) Written Material

No written or photographic material may be handed round at the meeting, with the exception of a petition related to an item under discussion.

(f) Responding to the statement

Responses will be given as part of the consideration of the relevant Agenda item. The response will usually be given by the relevant Cabinet Member or the Chairman of the committee meeting. There will be no opportunity for asking a supplementary question.

(g) Scope of statement

The Chairman may disallow or terminate any public participation which discloses confidential or exempt information or is inappropriate, abusive, indecent, discriminatory, frivolous, irrelevant or otherwise unacceptable.

ESSEX COUNTY COUNCIL

PUBLIC QUESTIONS AT COUNCIL

- The Council welcomes public interest in its business. Its formal meetings are open to the public, unless confidential business is being discussed, and the papers are published on the Council's website.
- The Council also welcomes public engagement and has therefore adopted the following procedure to ensure questions by members of the public at meetings of the Council are dealt with effectively.
- County Hall and the Council Chamber are accessible to wheelchair users and people with mobility disabilities and every reasonable assistance will be given to enable members of the public to ask a question.
- Questions must relate to any matter over which the Council has powers or duties and should not require the disclosure of confidential or exempt information.
- For further information or advice contact the Council's Governance Helpline on 01245 435313 or email governancehelpline@essex.gov.uk

Public Questions Procedure

(a) General

Before the beginning of every meeting of the Full Council there shall be a period of up to 30 minutes to enable members of the public to ask questions. Written statements and documents including photographs may not be circulated at the meeting, with the exception of petitions.

(b) Notice of questions.

A question may be asked under this procedure only if it has been sent to the Head of Democratic Services by e mail at:

governancehelpline@essex.gov.uk

by no later than 10.30 am seven days before the meeting. A question may be given by post if you do not have access to e mail by writing to the Head of Democratic Services at P O Box 11, County Hall, Chelmsford, Essex CM1 1LX.

(c) Number of questions

Only one speaker will be permitted to speak on behalf of an organisation. No person may ask more than one question at any meeting and there will be no opportunity for asking a supplementary question.

(d) Order of questions

Questions will normally be dealt with in the order in which notice of them is received, except that the Chairman may group together similar questions. Any question must be asked within a 3-minute time limit.

(e) Scope of questions

A question may be rejected if it:

- (i) is not about a matter for which the Council has powers or duties;
- (ii) is defamatory, frivolous, vexatious or offensive;
- (iii) is substantially the same as a question put to a meeting in the previous six months;
- (iv) will require the disclosure of confidential or exempt information; or
- (v) is already subject to separate appeal, adjudication, litigation, mediation or dispute resolution.

(f) Notification of rejected questions

Notification of rejected questions will be given at the earliest opportunity in the written form in which they were received and include reasons for rejection in accordance with (e) above.

(g) Question paper

The clerk to the meeting shall circulate prior to the meeting a copy of the question(s) submitted by members of the public to those present.

(h) Asking a question at the meeting

The Chairman will invite the questioner formally to put the question to the meeting.

If the questioner requires someone to read their question for them, the Chairman will ask the question on their behalf but they must be present at the meeting.

(i) Response

A response may take the form of:

- (i) a direct oral response; or
- (ii) where the desired information is in a published form, a reference to that publication.
- (iii) .

Save for the Member replying to the question, no other Member shall be permitted to respond.

(j) Withdrawal of question

Any question may be withdrawn by the person submitting it at any time.

(k) Questions not dealt with in the time allotted

Any question of which proper notice has been given but which is not dealt with in the allotted time of 30 minutes will not be held over to the next meeting: after the meeting a written response will be given in the form in which the question was received.

PROTOCOL ON THE USE OF MEDIA TOOLS AT MEETINGS HELD IN PUBLIC

1. Introduction

The purpose of this protocol is to provide guidance on the use of media tools by members of the public or representatives of the media at meetings of Council, Cabinet, committees and sub-committees. This includes filming, audio recording, taking photographs, blogging, tweeting and using other social media websites.

2. General Principle

The use of media tools, in certain circumstances, is recognised as contributing towards transparency and democratic debate and there will be a general presumption in favour of allowing their use. However, the proceedings of a meeting must not be disrupted by the use of media tools and such use must not inhibit community involvement in the proceedings.

3. Filming and Audio Recording

Filming and audio recording of meetings, normally by representatives of the media but also by members of the public using small media tools, shall generally be permitted provided that a request is submitted at least two working days before the meeting c/o Democratic Services, Corporate Law and Assurance, P O Box 11, County Hall, Chelmsford, Essex, CM1 1LX or by email to governancehelpline@essex.gov.uk. Such requests will include:

- the name, organisation and contact details of the person making the request;
- what equipment will be used;
- what the film or audio recording will be used for; and
- when the person wishes to film or record during the meeting.

On receipt of a request to film or audio record a meeting, Democratic Services will liaise with the Chairman of the meeting, or in their absence the Vice-Chairman, before determining whether the request accords with the general principle set out above.

Any filming or audio recording must take place from fixed positions in the meeting room agreed with the Chairman of the meeting. Equipment must be set up before the meeting starts.

If the Chairman considers that the filming or audio recording is disrupting the meeting in any way, the operator will be required to stop immediately.

Any film or audio recording must not be edited in such a way that could lead to misinterpretation of the proceedings. This includes refraining from editing the views being expressed in a way that may ridicule or show a lack of respect towards those present at the meeting.

Media organisations will be required to supply the Council with a copy of all film or audio recording made at a meeting within a reasonable period.

The requirements and obligations contained within, and arising from this protocol will be provided to the member of the public or media organisation when permission to film has been granted, and will state that permission is only granted on the understanding that they will be adhered to.

4. Other use of Media Tools

No restrictions will be placed on anyone in the public gallery at a meeting in relation to the use of twitter, blogs, facebook and still photography, provided that there is no flash photography and the Chairman does not consider their actions are disrupting the proceedings of the meeting.

At the start of the meeting the Chairman will request that all mobile phones are set to 'silent' to ensure that the meeting is not disrupted.

8. Changes to the Overview and Scrutiny Committee Procedure Rules

In reviewing the experiences of the call-ins for the Deanes School one of the matters raised has been the use of the terms “witness” and “evidence” and the impact these terms have on attitudes to those addressing a Scrutiny Committee. With this in mind it is felt that the use of the terms “contributor” and “contribution” would be a more acceptable alternative as they are less adversarial. They come with more positive connotations and also have less of a coercive overtone because generally a ‘contribution’ implies something willingly given – but you can still be asked to make a contribution.

It is proposed that Articles 9 and 10 and the Overview and Scrutiny Committee Procedure Rules are reviewed to change any references to “witness” and “evidence” to “contributor and witness” and “contribution and evidence”. Documents supporting the Scrutiny process will be similarly reviewed.