



Chelmsford City Council Governance Committee

18 October 2023

Proposed Amendments to the Constitution

Report by:

Legal and Democratic Services Manager

Officer Contact:

Lorraine Browne, Legal & Democratic Services Manager & Monitoring Officer, email: lorraine.browne@chelmsford.gov.uk, tel: 01245 606560

Purpose

To consider the recommendations of the Constitution Working Group in relation to proposed changes to the City Council's Constitution.

Recommendations

That, subject to any views the Cabinet might have, the Council be recommended to approve:

1. the amendments to the Constitution detailed in Appendix 1 to this report;
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1. Introduction

- 1.1. The Council's Constitution is reviewed at least annually to ensure that it remains complete, up to date and reflects current practice and legislation. Some parts of the Constitution, such as the rules relating to meetings and officer delegations, are likely to need detailed review as they are more likely to be affected by changes to organisational practices and legislation. Other parts only need periodic detailed examination as they tend not to change significantly over time.

- 1.2. The annual governance statement and action plan approved at the Joint meeting of Audit and Risk Committee and Governance Committee in June 2023 included an action to complete an ongoing phased review of the constitution which is now reviewing any constitutional documents that have not been reviewed within the last few years. Consequently more changes are being brought forward during this review period and further changes are likely to arise until this review has been completed.
- 1.3. Annual reviews and other ad hoc reviews are initiated by officers and their recommendations are submitted in the first instance to the Constitution Working Group. Its recommendations are then passed to the Governance Committee, the Cabinet (where appropriate) and finally Full Council.
- 1.4. The Governance Committee is asked to consider the following changes to the Constitution (full details of which are set out in Appendix 1):
 - A clarification in relation to methods of voting at meetings
 - Broadening the existing officer delegation to the Legal and Democratic Services Manager in relation to minor amendments to the constitution, subject to consultation with the Chair of Governance Committee.

2. Voting

- 2.1 A City Councillor raised whether a vote by assent (e.g. the chair of the meeting asking members “is that agreed?” rather than asking for a show of hands) should be permitted.
- 2.2 The default position for voting under the Constitution is a show of hands unless a recorded vote is requested. However, custom and practice has been to permit a vote by assent in relation to non-controversial items across all meetings. The justification for a vote by assent is that all members present at the meeting and entitled to vote agree – or at least are taken to have agreed – to the item whether they say that the matter is agreed or not. By their silence, they indicate agreement just as much as by a show of hands.
- 2.3 It is worth noting that any member present at the meeting and entitled to vote may, under 4.1.15.6 of Council procedure rules, have their individual vote (or abstention) recorded in the minutes. Similarly, custom and practice has been to permit a voting councillor present at any other meetings to similarly note any dissent in relation to items of business, as necessary. This option would remain even when a vote has been taken by assent.
- 2.4 The Constitutional Working Group discussed this issue. There was support for clarifying the Constitution to permit expressly the practice of voting by assent; it was suggested that the Chair of the meeting should pause where a

vote by assent is used so that individual members who wish to make their dissent clear have an opportunity to do so. Where there is dissent, the Chair of the meeting may revert to a show of hands. For completeness, both the Council rules and the Cabinet/Committee rules make provision for a recorded vote to be taken in some circumstances.

- 2.5 The rule change is sought to clarify that a vote by assent is permitted.

3. Delegation

- 3.1 A significant change to the Constitution – such as the amendments discussed in this report – can only be made by Council. That limits the opportunities to make changes, which is appropriate for any significant change but would risk creating practical difficulties if no urgent changes could be made.
- 3.2 That's why minor changes can be made under Article 2.16.3. This permits the Legal and Democratic Services Manager, to make minor changes without requiring Council agreement. Examples are:
- Any change in legislation governing Council operations (without significantly affecting those operations)
 - The change from four directors to three in 2021, meaning there was no longer a Director of Financial Services
 - Changes in Cabinet roles and responsibilities decided by the Leader
- 3.3 There are other circumstances where minor changes to the Constitution need to be made, for example to correct errors (such as statutory references) or to update cross-references to changes that have been made elsewhere in the Constitution but were missed at the time.
- 3.4 Typographical errors and corrections are permitted under the delegation in any event. It has been proposed that the delegation to make minor changes should be broader so that it expressly permits any minor change and is not limited to the categories that are currently mentioned, putting this beyond argument.
- 3.5 The Constitutional Working Group discussed this proposed change. The working group was happy to recommend that the delegation be broadened so that "minor changes" that arose outside of the 3 specific examples already contained within the rules would be permitted by delegation, subject to consultation with the Chair of Governance Committee. The working group was also provided with a draft copy of a new proposed practice note that would help clarify the process to make changes to the constitution.

4. Conclusion

- 4.1. Both proposed amendments to the constitution were supported by the cross-party working group. The proposals will be referred to the Cabinet for its comments before being passed to Full Council in December 2023.

List of Appendices

Appendix 1 – Proposed amendments

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees: Constitution Working Group

Relevant Policies and Strategies:

None

Governance Committee 18th October 2023 – proposed changes to the constitution

Item proposed for change	Current version	Proposed version (with additions highlighted)
<p>1. Voting - clarification that voting “by assent” eg asking the meeting whether the item is agreed ? is permitted at the discretion of the person chairing the meeting. The Rules of Debate practice note will also be updated.</p>	<p>Council procedure rules 4.1.15.3 Voting by show of hands Voting will be by show of hands unless a recorded vote is requested under rule 4.1.15.4.</p> <p>Cabinet and Committee procedure rules 4.2.18.3 Voting by show of hands Unless a recorded vote is requested under rule 4.2.18.4, voting will be by show of hands.</p>	<p>Council procedure rules 4.1.15.3 Voting by show of hands Voting will be by show of hand unless a recorded vote is requested under rule 4.1.15.4 or the Mayor proposes a vote by assent.</p> <p>Cabinet and Committee procedure rules 4.2.18.3 Voting by show of hands Unless a recorded vote is requested under rule 4.2.18.4 or the person chairing the meeting proposes a vote by assent, voting will be by show of hands.</p>

<p>2. Changing the constitution – tweak to delegation in relation to making minor changes to the constitution and not limited to the specific situations set out in the existing rules. A new practice note is also proposed to help clarify the process to be followed in relation to the various types of changes to the constitution that could be made. This will be finalised after members have considered their position in relation to this proposed change.</p>	<p>Article 2.16.3</p> <p>The Legal and Democratic Services Manager shall have authority to make minor changes to the constitution arising from new legislation or changes to the organisational structure of the Council arising from decisions of the Council or Cabinet or in exercise of the Leader’s authority to make changes to Cabinet responsibilities.</p>	<p>Article 2.16.3</p> <p>The Legal and Democratic Services Manager shall have authority to make minor changes to the constitution including but not limited to those arising from new legislation or changes to the organisational structure of the Council arising from decisions of the Council or Cabinet or in exercise of the Leader’s authority to make changes to Cabinet responsibilities. Any minor changes which fall outside of the above examples will be subject to consultation with the Chair of Governance Committee</p>
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