

Report of:	Monitoring Officer
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Portfolio Leader:	Leader of the Council
Key Decision:	No
Report Track:	Council: 05/08/20

COUNCIL
5 AUGUST 2020
CONSTITUTION AMENDMENTS

1 Purpose of Report

- 1.1 To present to Council for consideration proposed amendments to the Constitution.

2 Recommendation

- 2.1 That the proposed amendments to the Constitution, as detailed in Appendix 1, be approved.

3 Key Issues and Reasons for Recommendations

Key Issues

- 3.1 The current version of the Constitution was approved by Council on 12 August, 2015, and came into effect on 1 September, 2015.
- 3.2 Under Section 12 of the Constitution (Review and Revision of the Constitution), the Monitoring Officer, in conjunction with the Constitution Working Group, is required to monitor and review the Constitution on an annual basis.
- 3.3 The Constitution Working Group met on 3 February 2020 to undertake its latest review and considered a number of amendments for approval by Council, which are outlined in report paragraph 5.

Reason for Recommendations

- 3.4 In order to ensure the Constitution remains up-to-date, Council is requested to approve the proposed amendments as detailed in Appendix 1.

4 Relationship to Corporate Priorities

- 4.1 The Constitution provides for the proper governance of the Council and cuts across all priorities.

5 Report Detail

- 5.1 The process for reviewing the Constitution on an annual basis was adopted as part of the review undertaken in 2015 to ensure that it would remain up-to-date and allow for amendments to be made in a timely manner if the need was identified during the year.
- 5.2 The latest review undertaken by the Monitoring Officer, in conjunction with the Constitution Working Group, considered the following proposed amendments to the Constitution, along with the reasons for why the amendments had been put forward. The amendments are shown as tracked changes in [Appendix 1](#).

Part/Section Amended	Amendment	Reasons for Amendments
Part 2, Section 5 (The Chairman of the Council): <i>Paragraph 5.1(a)</i>	Insert the wording shown in bold : The Chairman of the Council is the civic head of the Council and will represent the Council at such civic and ceremonial functions, including at the funerals of past or serving Members (subject to the wishes of the families) , as the Council and he/she determine appropriate and will also act as the Council's ambassador within and outside the District.	Non-attendance by the Chairman of the Council at funerals of past or serving Members (subject to the wishes of the families) may be seen as a lack of respect toward past or serving Members who had given their service to the Council.
Part 3, Section 16 (Scrutiny Committees) <i>Paragraph 16.2(i)</i>	Delete reference to 'Health and Social Care Act 2001' and replace with 'National Health Service Act 2006.'	To ensure the correct legislation was referenced in the Committee's functions.
Part 3, Section 22 (Appeals and Complaints Panel) <i>Paragraph 22.10</i>	Insert the following wording at the end of the paragraph: 'The Panel does not have the power or authority to award financial compensation to appellants and / or complainants.'	To provide additional clarity as to what the Panel's delegated powers are.

Part/Section Amended	Amendment	Reasons for Amendments
<p>Part 3, Section 25 (Substitution Scheme) <i>Paragraph 25.2(a)</i></p>	<p>After 'meeting', insert: 'or act in their capacity as a Committee member for part or all of that meeting'.</p>	<p>In instances where a Member may have a pecuniary interest in an agenda item, to allow them to appoint a substitute for the whole meeting, but still attend to exercise their rights to speak as a member of the public (if procedure rules allow).</p>
<p>Part 3, Section 26 (Scheme of Delegations) <i>Annex 5, Page 3-26-34</i></p>	<p>Insert new bullet point at top of page: 'Protection from Eviction Act 1977'</p>	<p>To ensure the correct legislative references were included in the delegation scheme.</p>
<p>Part 4, Section 27 (Council Procedure Rules) <i>Rule 6</i></p>	<p>Insert new sub-paragraph (4): Motions Having Financial Impact Motions containing proposals which would:- (a) Increase the capital and/or revenue expenditure of the Council and/or, (b) Reduce the income of the Council, must first be referred to the Cabinet by the Managing Director, prior to consideration by Council.</p>	<p>Council is required by law to set a balanced budget and to monitor it throughout the year, and it also has a fiduciary duty to its ratepayers and Council Tax payers. Cabinet has a role within the budget setting process to put forward costed proposals, and should also have a role in assessing the impact of any budgetary amendments in-year. Officers would be able to provide professional advice and ensure any financial decisions are made in a considered way and based upon all relevant information.</p>

Part/Section Amended	Amendment	Reasons for Amendments
Part 4, Section 27 (Council Procedure Rules) <i>Rule 6</i>	In current Rule 6(4), insert the wording shown in bold : If the subject matter of any motion of which notice has been duly given comes within the province of the Cabinet or any Committee of Sub-Committee, or falls within rule 6(4) above...	To ensure the new rule 6(4) is covered within the provision for motions that are automatically referred to Cabinet etc.
Part 4, Section 27 (Council Procedure Rules) <i>Rule 6</i>	Insert new sub-paragraph (8): Motions that are referred to Cabinet by virtue of rule 6(4), above, shall be considered at the next practicable Council meeting following its consideration by Cabinet, and the following procedures will have effect: (a) The motion will already be deemed to have been moved and seconded at the previous Council meeting. (b) The mover of the motion will present the motion again. (c) The relevant Cabinet Portfolio Holder, or other Cabinet member if unavailable, shall present the report or recommendations of Cabinet, but may also speak again during the debate on the motion. (d) The original motion will then be discussed under the normal rules of debate.	The process would still allow Members to present their motions to Council, but would suspend any decision until the budgetary implications have been appropriately considered.
Part 4, Section 27 (Council Procedure Rules) <i>Rule 10</i>	In Rule 10(12)(b), delete the word 'original' and replace with 'procedural'.	To ensure that the correct motion is being voted on at that point in proceedings.

- 5.3 Furthermore, any updates to the Scheme of Delegations approved by Cabinet or Council since April 2019 will also be inserted into the Constitution as part of this update.

6 Implications

6.1 Financial

None.

6.2 Legal

Keeping the Constitution under regular review ensures that it complies with any relevant legal requirements currently in force.

6.3 Human Resources

None.

6.4 Section 17 (Crime Prevention)

None.

6.5 Human Rights Act

None.

6.6 Data Protection

None.

6.7 Risk Management

None.

6.8 Equality and Diversity

None.

6.9 Best Value

None.

7 Appendices to the Report

Appendix 1: Tracked changes amendments to the Constitution.

Background Papers

Notes of the meetings of the Constitution Working Group.

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Section 5

The Chairman of the Council

5.1 ROLE AND FUNCTION OF THE CHAIRMAN

The Chairman and Vice-Chairman will be elected at the Annual Meeting of the Council. The Chairman and Vice-Chairman may not be members of the Executive.

The Chairman of the Council and, in his/her absence, the Vice-Chairman, will have the following roles and functions:

- (a) the Chairman of the Council is the civic head of the Council and will represent the Council at such civic and ceremonial functions, including at the funerals of past or serving Members (subject to the wishes of the families), as the Council and he/she determine appropriate and will also act as the Council's ambassador within and outside the District;
- (b) to preside over meetings of the Council so that its business can be carried out efficiently and effectively having regard to the rights of Councillors and the interests of the community;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members determine strategic objectives, policies and programmes to be followed;
- (d) to promote public involvement in the Council's activities;
- (e) to maintain the dignity of the office and at no time bring discredit to it or the Council;
- (f) to be available for consultation on any matter upon which consultation with the Chairman of the Council is required under this Constitution.

5.2 CHAIRMAN'S FUNDRAISING

- (i) The Chairman may organise, engage in or otherwise be involved in events for the purposes of fund raising for their chosen charities as determined at the start of the municipal year.
- (ii) The Managing Director shall, in consultation with the Chairman of the Council, determine the distribution of the Chairman's fundraising and all matters including events, town twinning arrangements and monies raised throughout the year.

Section 16

Scrutiny Committees

16.1 STATUS

The Council will appoint such Overview & Scrutiny Committees as it considers appropriate (referred to as “Scrutiny Committees”). The current Scrutiny Committees are listed in the APPENDIX to this Section with their membership and Terms of Reference.

16.2 MEMBERSHIP AND METHOD OF APPOINTMENT

Every Member of Cannock Chase District Council is eligible to be member of Scrutiny Committees except those who are members of the Executive.

Membership of Scrutiny Committees will be subject to the requirements as to political balance set out by Section 15 of the Local Government and Housing Act 1989 (as amended).

Each Scrutiny Committee will have 13 members except that:

- (i) The Wellbeing Scrutiny Committee shall, when and only when the Committee is carrying out the Statutory Functions of the Council’s Health Scrutiny Committee under the [National Health Service Act 2006](#) ~~Health and Social Care Act, 2001~~ and Regulations made under that Act, have an additional member nominated by Staffordshire County Council who shall have full participating and voting rights during that business only.

The Council’s ‘Substitution Scheme for Committees (Part 3, Section 25 of this Constitution) shall apply, with each political group entitled to nominate one named substitute.

Scrutiny Committees shall be entitled to appoint individuals and/or representatives of organisations as non-voting co-optees.

16.3 CHAIRMAN AND VICE-CHAIRMAN

The Chairmen and Vice-Chairmen will be appointed by Council.

16.4 FREQUENCY OF MEETINGS

The meetings of each Scrutiny Committee will be held in accordance with the schedule of meetings agreed by the Council and other arrangements regarding the calling of meeting.

The Chairman of a Scrutiny Committee shall convene additional meetings of that Scrutiny Committee as required to deal with ‘call-ins’ and matters referred

Section 22

Appeals and Complaints

Panel

22.1 STATUS

The Appeals and Complaints Panel is a committee of the Council with the purpose of:

- (a) hearing employee appeals in respect of Chief Officers of the Council, with the exception of the Managing Director, the Section 151 Officer and the Monitoring Officer for whom other national and local procedures take precedence;
- (b) hearing requests for review of decisions delegated to officers in respect of various Housing issues;
- (c) dealing with official complaints under Stage 3 of the Council's Complaints Procedure;
- (d) dealing with Ombudsman complaints where these cannot be settled by Officers in accordance with delegated powers.
- (e) dealing with requests for review of decisions made by Officers in the Urban Forestry Section in response to requests to carry out work to Council owned trees.

The Panel shall not hear any matters where the decision on the matter is delegated to another body within the Council. If a matter brought before the Panel includes such matters, or it becomes apparent during the hearing that it includes such matters, the Panel will refer that aspect of the matter to the appropriate body for decision.

22.2 MEMBERSHIP AND METHOD OF APPOINTMENT

The Appeals and Complaints Panel will comprise not more than 5 eligible Members of the Council, appointed by the Council in compliance with Section 15 and Schedule 1 of the Local Government and Housing Act 1989 concerning political balance. A Member should not hear an appeal or complaint in circumstances which might give rise to doubt as to their impartiality. Accordingly, a Member should not sit at the hearing of a case if he or she has any prejudicial or professional interest in the case or had involvement in the original decision against which an appeal or complaint is being made.

22.3 CHAIRMAN AND VICE-CHAIRMAN

At each meeting of the Appeals and Complaints Panel the Chairman shall be appointed by and from the Members of the Council present.

22.4 ATTENDANCE BY COUNCILLORS WHO ARE NOT MEMBERS OF THE COMMITTEE

Council Procedure Rules 6(6) and 19 will apply.

22.5 FREQUENCY OF MEETINGS

Meetings of the Appeals and Complaints Panel will be convened by the Managing Director normally within 30 working days following receipt of notice of an appeal or complaint except where statute requires otherwise e.g. homelessness appeals. The Managing Director will give notice in writing at least 10 working days in advance of the time and place of the hearing.

22.6 AGENDA

Prior to the meeting of the Panel, the Managing Director will circulate to all Members on the Panel (and appellants or complainants where relevant) the Agenda and Reports to be considered.

22.7 PROCEEDINGS

The Managing Director (or nominee) shall be the Clerk of the Panel.

The provisions of Schedule 12A of the Local Government Act 1972, as amended, in respect of exempt information will apply.

22.8 EXCHANGE OF DOCUMENTS

At least 8 working days before the date of the hearing the parties will exchange statements and relevant documents which it is intended shall be presented to the Appeals and Complaints Panel. Copies of these documents should also be sent to the Managing Director.

22.9 FUNCTIONS AND PROCEDURE

To undertake the following functions in accordance with the scheme of delegation and codes of conduct:

- to be responsible for and to hear matters in accordance with Annexes 1, 2 and 3 as appropriate to the appeal or complaint being considered it (the Panel).

22.10 DELEGATED POWERS

The Appeals and Complaints Panel is empowered to deal with any of its functions and has delegated authority to resolve any appeal or complaint referred to it for determination by Council. In the case of equality of votes, the

Chairman shall give a casting vote provided he/she has already voted in his/her capacity as a member of the Appeals and Complaints Panel.

The Panel does **not** however have the power or authority to award financial compensation to appellants and/or complainants.

22.11 OTHER MATTERS

Where not already provided for above, the Council's Procedure Rules for the regulation of proceedings and business will apply.

Section 25

Substitution Scheme for Committees

25.1 INTRODUCTION

In addition to appointing usual Members to Serve on Committees, the Council may also appoint the number of Councillors shown below, on the nomination of the Political Groups, to act as the substitute members for the following Committees:-

- (i) Planning Control Committee – one substitute for each political group represented on the committee.
- (ii) Scrutiny Committees – one substitute for each political group represented on each of the committees.
- (iii) Licensing and Public Protection Committee – one substitute for each political group represented on the committee when it is acting in its remit as the Licensing Committee.
- (iv) Licensing and Public Protection Committee – one substitute for each political group represented on the committee when it is acting in its remit as the Public Protection Committee.

The substitute members of the Planning Control Committee and the Licensing and Public Protection Committee shall have had the relevant training before sitting on the committee as a substitute member.

25.2 PROCEDURE

- (a) If a usual member of the Committee is unable to attend a meeting, or act in their capacity as a Committee member for part or all of that meeting, he/she may make the necessary arrangements with the named substitute members for that Committee from that Political Group.
- (b) The usual member will either give, or arrange for the Group Leader (or his/her nominee) to give, written notice (or by e-mail) of the substitution to the Managing Director by 5:00pm on the day before a meeting scheduled to commence before 3:00pm and by 10:00am on the day of a meeting scheduled to commence at 3:00 pm or later. The Managing Director or his appointee will record the substitution in a book kept for the purpose.

Annex 5 Legislation – Environmental Health and Environmental Protection

- Animal Health & Welfare Acts 1981 and 1984
- Animal Welfare Act 2006
- Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018
- Anti Social Behaviour Act 2003
- Anti-Social Behaviour Crime and Policing Act 2014
- Building Act 1984
- Caravan Sites Act 1968
- Caravan Sites and Control of Development Act 1960
- Charities Acts 1992 and 2006
- Clean Air Act 1993
- Clean Neighbourhoods & Environment Act 2005
- Control of Pollution Act 1974
- Criminal Justice and Police Act 2001
- Criminal Justice and Public Order Act 1994
- Dangerous Dogs Acts 1989 and 1991
- Dangerous Wild Animals Act 1976
- Energy Act 2013
- Environment Act 1995
- Environmental Protection Act 1990
- Food & Environment Protection Act 1985

- [Protection from Eviction Act 1977](#)
- Public Health Act 1875, 1936 and 1961
- Public Health (Control of Diseases) Act 1984
- Radioactive Substances Act 1993
- Refuse Disposal (Amenity) Act 1978
- Regulatory Reform (Housing Assistance) (England and Wales) Order 2002
- Rent (Agriculture) Act 1976
- Road Traffic Act 1988
- Slaughter of Poultry Act 1967
- Sunday Trading Act 1994
- Town Police Clauses Act 1847
- Traffic Management Act 2004
- Transport Act 1985
- Scrap Metal Dealers Act 2013
- Vehicles (Crime) Act 2001
- Water Industry Act 1991
- Zoo Licensing Act 1981

and all Regulations or Orders made or deemed to be made under those Acts or relating to the foregoing or having effect by virtue of the European Communities Act 1972; and any amendments, modifications or re-enactment to the foregoing.

Section 27

Council Procedure Rules

1. MEETINGS OF THE COUNCIL

- (1) The annual meeting of the Council must be held as provided by the Local Government Act 1972 on a date and at a time fixed by the Council.
- (2) Other meetings of the Council shall be held at such other days as the Council may fix.
- (3) An extraordinary meeting of the Council may be called at any time by the Chairman, Managing Director, Chief Finance Officer or the Monitoring Officer.
- (4) An extraordinary meeting of the Council may also be called provided that at least 5 Members have signed a requisition to that effect and have passed that to the Chairman of the Council. If, at the expiry of 5 clear working days from the receipt of the request the Chairman fails to call the requested extraordinary meeting within 10 clear working days then any 5 Members (which can be the same Members as made the initial request) may call an extraordinary meeting of the Council to which the Proper Officer shall so arrange.
- (5) The date, time and place of meetings will be determined by the Proper Officer.
- (6) The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules and current regulations. The Proper Officer will send a summons by post or electronic means to every member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted and will be accompanied by such reports as are available.

2. CHAIRMAN AND VICE-CHAIRMAN OF THE COUNCIL

- (1) The election of the Chairman of the Council shall be the first business to be transacted at the annual meeting of the Council.
- (2) The Council shall at the annual meeting appoint, by election, a Vice-Chairman.
- (3) The Chairman of the Council or if he is absent, the Vice-Chairman preside. If the Chairman and Vice-Chairman are absent a Member who is not a Member of the Executive, shall be appointed, by election, by those present to preside.

- (b) To consider the business specified in the summons for which the extraordinary meeting was called.

5. MINUTES

- (1) The Chairman will move that the minutes of the previous Council meeting be signed as a correct record.
- (2) No discussion shall take place on these minutes, except as to their accuracy. The Chairman shall sign the minutes when they have been agreed.
- (3) Extraordinary Meetings shall not be used to sign minutes. Minutes of Council Meetings shall only be approved by the Annual Meeting or an ordinary meeting of the Council.

6. NOTICES OF MOTION

(1) Delivery of Notice of Motion

- (a) Notice of a motion other than one referred to in Rule 7 must be given in writing and signed by the Member(s) giving notice. It must be delivered to the Proper Officer at least 7 clear working days before the meeting of the Council at which it is to be considered;
- (b) The Proper Officer must ensure a record is kept of notices of motion received. Members are entitled to see this record.

(2) Motions to be set out in Summons

The summons to a meeting of the Council must set out motions in the order in which they have been received unless they have been withdrawn in writing or relate to a later meeting.

(3) Motions not Moved

Unless postponed with the consent of the Council a motion in the summons which is not moved (by the person who has given notice or a Member on his behalf) is deemed to be withdrawn.

(4) Motions Having Financial Impact

Motions containing proposals which would:-

(a) -Increase the capital and/or revenue expenditure of the Council and/or,

(b) -Reduce the income of the Council,

must first be referred to the Cabinet by the Managing Director, prior to consideration by Council.

(45) Automatic Reference to Cabinet, Committee or Sub-Committee

If the subject matter of any motion of which notice has been duly given comes within the province of the Cabinet or any Committee or Sub-Committee, or falls within rule 6(4), above, it shall formally be moved and seconded and stand referred without discussion to the next (where practicable) Cabinet or to such Committee or Sub-Committee or to such other Committee or Sub-Committee as the Council may determine for consideration and report; provided that the Chairman may, if the Chairman considers it convenient and conducive to the despatch of business, allow the motion to be dealt with at the meeting at which it is brought forward.

(56) Scope of Motions

Every motion shall be relevant to some matter in relation to which the Council has powers or duties or which affects the district.

(67) Mover of Motion may attend Cabinet, Committee or Sub-Committee

A Member of the Council who has moved a motion which has been referred to the Cabinet or any Committee or Sub-Committee shall have notice of the meeting at which it is proposed to consider the motion. The Member shall have the right to attend the meeting and speak but shall not vote upon that motion unless the Member is a Member of the Cabinet, Committee or Sub-Committee considering the motion.

(8) Motions Considered Under Rule 6(4)

Motions that are referred to Cabinet by virtue of rule 6(4), above, shall be considered at the next practicable Council meetings following its consideration by Cabinet, and the following procedures will have effect:

- (a) The motion will already be deemed to have been moved and seconded at the previous Council meeting.
- (b) The mover of the motion will present the motion again.
- (c) The relevant Cabinet Portfolio Holder, or other Cabinet member if unavailable, shall present the report or recommendations of Cabinet, but may also speak again during the debate on the motion.
- (d) The original motion will then be discussed under the normal rules of debate.

7. MOTIONS WHICH MAY BE MOVED WITHOUT NOTICE

The following motions and amendments may be moved without notice:-

- (1) appointment of a Chairman of the meeting at which the motion is made;

(12) Closure motions

- (a) A member may move, without comment, the following motions at the end of a speech of another member:
 - (i) to proceed to the next business;
 - (ii) that the question be now put;
 - (iii) to adjourn a debate; or
 - (iv) to adjourn a meeting;
- (b) If a motion to proceed to next business is seconded and the Chairman thinks the item has been sufficiently discussed, he or she will give the mover of the motion or the amendment the right of reply and then put the procedural ~~original~~ motion to the vote without further debate or discussion.
- (c) If a motion that the question be now put is seconded and the Chairman thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote without further debate or discussion. If it is passed he/she will give the mover of the motion or the amendment the right of reply before putting the motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving any right of reply and without further debate or discussion.
- (e) Items of business not dealt with prior to the meeting being adjourned shall be considered at the re-convened meeting of Council which shall take place 14 calendar days following the decision to adjourn.

(13) Points of Order and Personal Explanations

- (a) A Member may raise a point of order at any time. The Chairman will hear the argument immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule or law and the way in which he/she considers it has been broken without which the alleged breach shall be disregarded. Unless the Member refers explicitly to the relevant Rule of Procedure or law they shall not be heard.
- (b) A Personal Explanation shall be confined to some material part of a former speech made by that Member which may have been