

WESTMORLAND AND FURNESS COUNCIL

Report Title:	Constitutional Update Report
Meeting:	Council
Meeting Date:	23 November 2023
Report Author:	Linda Jones – Chief Legal and Monitoring Officer
Lead Cabinet Member(s):	Cllr Andrew Jarvis - Cabinet Member for Finance
Wards Affected?	N/A
PUBLIC, PART EXEMPT OR FULLY EXEMPT	Public
List of Appendices (if any)	Appendix 1: Changes to the Council Procedure Rules Appendix 2: Changes to the Cabinet Procedure Rules Appendix 3: Amendments to the Councillor/Officer Protocol Appendix 4 Protocol for Notifying Local Members

1. Executive Summary

1.1 This report asks members to:

1.1.1 agree amendments to the Council Procedure Rules, the Cabinet Procedure Rules and the Councillor/Officer Protocol in the Constitution.

1.1.2 agree amendments to the constitution to clarify the definition of Key Decision, to provide that decisions made by Locality Boards are subject to Call-In, to amend the delegation to Chief Officers to respond to consultations and to amend the rules relating to the publication of minutes of confidential meetings; and

1.1.3 to note minor amendments made by the Monitoring Officer to the Constitution under her delegated powers.

2. Recommendation

For the reasons set out in this report, it is recommended that Council -

2.1 agrees the amendments to the Council Procedure Rules shown in red in Appendix 1;

2.2 agrees the amendments to the Cabinet Procedure Rules shown in red in Appendix 2;

2.3 agrees the amendments to the Councillor/Officer Protocol shown in red in Appendix 3;

2.4 agrees the Protocol for Notifying Local Members as set out in Appendix 4;

2.5 agrees amendments to the Constitution to amend the definition of Key Decision, to provide that decisions made by Locality Boards are subject to Call-In, to amend the delegation to Chief Officers to respond to consultations, to deal with the publication of minutes of confidential meetings and to the provisions dealing with the

requirement to produce a written statement of non-key decisions made by an officer as set out in more detail below; and

- 2.6 notes the changes to the Constitution made by the Monitoring Officer under her delegated powers.

3. Information: the Rationale and Evidence

Council Procedure Rules.

- 3.1 A review has been carried out of the Council Procedure Rules and the amendments as shown in red in Appendix 1 are proposed to the Council Procedure Rules to provide greater clarity to the rules and ensure consistency. These amendments have been considered by the Constitution Review Working Group who have provided feedback on the amendments. Most of the amendments are tidying up amendments ensuring greater clarity and consistency.
- 3.2 The rules relating to the presentation of petitions, asking of questions and making of statements by members of the public have been simplified to remove provisions which are covered in the Public Participation Scheme adopted by Council in June to ensure there is no inconsistency between the two and to simplify the Council Procedure Rules. The Public Participation Scheme is included within the Constitution published on the Council's website so that members of the public can easily access these rules.

Cabinet Procedure Rules

- 3.3 A review has been carried out of the Cabinet Procedure Rules and the amendments set out in red in Appendix 2 are proposed to the Cabinet Procedure Rules to provide greater clarity to the rules and ensure consistency. These amendments have been considered by the Constitution Review Working Group who have provided feedback on the amendments. The amendments are tidying up amendments ensuring greater clarity and consistency.
- 3.4 **Member/Officer Protocol**
- 3.5 It is best practice to have a protocol that provides a guide to good working relationships between Officers and Members and supports good governance. The objective of the Protocol is to ensure that Members and Officers work together effectively and efficiently to conduct the business of the Council. Proposed changes are being recommended to the Protocol which are shown in red in Appendix 4. The Standards and Governance Committee and the Constitution Review Working Group have considered the recommended changes and provided feedback.
- 3.6 **Protocol for Notifying Local Members**
- 3.7 At its first meeting the Constitution Review Working Group requested that Officers look at the development of a Protocol for Notifying Local Members of issues relevant to their ward. The draft protocol (attached at Appendix 3) has been considered by the Constitution Review Working Group and they have provided feedback. Council is asked to adopt the Protocol.

3.8 **Key Decision Definition**

3.9 The definition of a Key Decision is critically important. Key decisions are required to be advertised on the forward plan for at least 28 days prior to the decision being made, key decisions made by Officers can be subject to call-in and there are certain other procedural requirements in relation to key decisions set out in the constitution. The requirements in relation to publication prior to key decisions being taken are set out in regulations and are a legal requirement.

3.10 The definition of key decision can be found in the Glossary. The current definition is:-

*“An executive decision which is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates, **and/or** is likely to be significant in terms of its effects on communities living or working in an area comprising **one or more** wards in the area of the Council. For these purposes, savings and expenditure are “significant” if they are equal to or greater than £500,000. For clarification, no treasury management decision shall constitute a Key Decision.*

3.11 It is proposed that amendments below are made to the highlighted wording. These amendments will provide clarity and will also align the definition with the relevant regulations. These amendments have been considered by the Constitution Review Working Group would provided feedback.

3.12 The proposed amendments are:-

3.12.1 “and/or” is amended by the deletion of the “and/”. This ensures it is clear that a decision is a key decision if it falls in either of the two limbs of the test; and

3.12.2 “one or more wards” is amended to read “two or more wards”. This follows the wording in the relevant legislation and ensures a key decision will only fall within this second limb if impacts on at least two wards.

3.13 **Call-In of Locality Board Decisions**

3.14 Paragraph 13 of the Overview and Scrutiny Procedure Rules found in Part 3 Section 5 of the Constitution sets out the rules relating to call-in. Paragraph 13.1 sets out which decisions are subject to call-in. Paragraph 13.1 provides:-

“When a decision is made by the Cabinet, an individual Cabinet member or a committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the Council’s registered office, normally within three days of being made. All Councillors will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.

3.15 Currently there is no reference to decisions made by Locality Boards even though Locality Boards do have the power to make executive decisions. The relevant

legislation, which can be found in the Local Government Act 2000 provides that all key decisions should be subject to call-in. A local authority made decide to expand the scope of their call-in powers to allow other decisions to be scrutinised.

3.16 It is recommended that the provisions of 13.1 referred to above should be amended to refer to decisions of the Locality Boards so these will also be subject to call-in. It is suggested this should apply to all executive decisions of the Locality Boards and not just key decisions so they will be treated in the same way as decisions of Cabinet or committees of Cabinet by adding the words “or an executive decision is made by a Locality Board” after “a committee of the Cabinet”. This reflects current practice where the minutes of the Locality Board are sent out to all members for call in.

3.17 **Chief Officers Delegated Authority to Respond to Consultations**

3.18 Paragraph 2.7 of the Scheme of Delegation to Officers in Part 2 Section 6 of the Constitution provides that Chief Officers have delegated authority “to respond to Government Consultations and consultations from other bodies, in consultation with the Leader or the relevant Committee Chair”.

3.19 The Council is asked to respond to a wide range of different consultations in different capacities and this ensures that Directors have clear delegated authority to respond to those in line with the consultation requirements but ensures they consult with Members before submitting responses.

3.20 Currently the requirement set out in the delegation provides that the Director must consult with the Leader or the relevant Committee Chair. In most cases the relevant Portfolio Holder will be the most appropriate member to consult with. In order to address these issues, it is proposed that the wording is amended to read “to respond to Government Consultations and consultations from other bodies, in consultation with the relevant Portfolio Holder and the relevant Committee Chair”.

3.21 The amendment has been considered by the Constitution Review Working Group.

3.22 **Publication of Minutes for Confidential Meetings**

3.23 Paragraph 8 of the Access to Information Procedure Rules found in Part 3 Section 3 of the Constitution deals with the public access to minutes and other documents after Council or committee meetings. It provides at 8.1.1 that “the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information” shall be published”.

3.24 The relevant legislation (found in s100C of the Local Government Act 1972) provides that the following minutes should be available to the public and published on the website– “the minutes, or a copy of the minutes, of the meeting, excluding so much of the minutes of proceedings during which the meeting was not open to the public as discloses exempt information”.

3.25 The wording in the Constitution does not follow the wording in the legislation as it provides any part of the minutes relating to a meeting held in private should not be published not just those part of the minutes which also disclose exempt information.

3.26 It is recommended the wording in Paragraph 8.1.1 should be amended to follow the wording of the legislation.

3.27 **Changes made by Monitoring Officer under Delegated Powers**

3.28 The Monitoring Officer has a duty under Paragraph 14 of Part 1 of the Constitution to monitor and review the operation of the Constitution and is empowered to make minor changes to the Constitution. Substantive changes require the approval of Council. The Monitoring Officer has made the following minor change under this delegated power:-

3.28.1 To delete the wording “including” at the end of paragraph 3.15 of the Terms of Reference of the Holehird Trust Committee;

3.28.2 To amend paragraph 21.1 of the Access to Information Procedure Rules in Part 3 Section 3 of the Constitution – Non-Key Decisions Made by an Officer to amend the first line so it provides “Where an officer is to make any decision other than a key decision” rather than “other than a non-key decision”.

4.0 **Communities, Economy and Culture, Customers, Workforce)**

4.1 Keeping the Constitution up to date ensure that we are in a position to meet all the Council Plan priorities.

5. **Consultation Outcomes (with services, ward councillors & public consultation where required)**

5.1 The Constitution Review Working Group has considered the changes recommended in this report and provided feedback.

6. **Alternative Options Considered**

6.1 Members could decide not to agree the amendments recommended.

7. **Financial Implications and risk**

7.1 There are no financial implications arising from this report.

8. **Legal & Governance Implications**

8.1 Substantive amendments to the Constitution require the approval of Council.

9. **Human Resources Implications**

9.1 There are no direct Human Resources implications arising from this report.

10. **Equality & Diversity Implications (including the public sector equality duty, Armed Forces Families, Care Leavers and Health inequalities implications)**

10.1 There are no equality and diversity implications arising from this report.

11. Background Information & Sources (used in preparation of this Report)

11.1 None.