

Title of report: Constitution Updates

Meeting: Council

Meeting date: []

Report by: Head of Legal Services and Deputy Monitoring Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Purpose

A report to propose amendments to the constitution.

Recommendation(s)

That Council approves changes in the Constitution:

- a) in Appendix 1 to enable a change to the process for questions from the public;
- b) in Appendix 2 to enable changes to clarify substitutes on Scrutiny Management Board;
- c) in Appendix 3 to make changes to clarify the planning rules in respect to deferrals;
- d) in Appendix 4 to make changes to clarify the appointments and procedure for the Health and Wellbeing Board;
- e) in Appendix 5 to makes changes to the Special Urgency procedure for executive decisions to ensure the Monitoring Officer is aware that a request is being made;
- f) in Appendix 6 for procurement changes including allowing commencement of a procurement to be delegated;**
- g) in Appendix 6 to enable motions to be allowed at Annual Council;
- h) in Appendix 7 to clarify the rules relating to business cases and virements for capital schemes;

i) in Appendix 8 to amend the requirements about the publication of Records of operational decisions (RoOD);

j) in Appendix 9 to make amendments to the Arrangements for dealing with complaints about the Code of Conduct;

k) in Appendix 10 to describe the scope and purpose of Political Group Consultations.

Alternative options

1. Council may choose not to approve the proposals and agree that functions will remain as currently described in the Constitution. This is not recommended

Key considerations

Appendix 1 – Questions from the Public

2. Part 4 Section 1 of the Constitution describes the procedure involved when a member of the public raises a question to council, cabinet or a committee of either. The current process is detailed as 'Questions on Notice' starting at paragraph 4.1.38.
3. In its current form, the rules are the same for all committees. However, at Annual Council meeting on 23 May 2025, a review of [effectiveness of scrutiny committees](#) was considered and in relation to public questions, it was agreed that a question or supplementary question would not be accepted if it had been raised at any meeting in the previous 6 months, or if the answer had already been provided. In addition, all questions including supplementary questions must be submitted in writing first to the council.
4. The effect of this is that questions raised to scrutiny have a 6 month/previous answer limitation but questions to any other body can be raised repeatedly. In addition, supplementary questions must be submitted in writing at a scrutiny committee meeting (even if the questioner attends) but for all other meetings, the questioner can raise this without notice.
5. The proposed amendments at Appendix 1 aim to apply the same principles as agreed by Council for scrutiny for all meetings of council, cabinet or any other committee listed in paragraph 4.1.39.
6. In addition to the above, supplementary questions can be raised by the public giving only 90 minutes notice to the meeting. This means that there is a scramble by officers to receive, analyse and agree with the relevant member a response. A meeting starting at 10am means that the question is received before an officer may have started work. A 2pm meeting is received during a lunch break. Officers consider that better and more complete replies can be provided if more time was provided.
7. The proposed amendment in Appendix 1 is that supplementary questions must be submitted 1 working day before the meeting. This is considered a balance as initial questions are received 3 working days before and answers published 2 working days.
8. Consultations with groups and Audit and Governance Committee has raised the question about what other councils do and what is best practice. Officers are of the view that best practice is

what suits this Council rather than has been adopted by others. We have considered four councils in the locality and have documented in the table below their standing orders on the matters under consideration. It is clear that no council has the same approach and this includes (i) a bar for some on supplemental questions for residents (ii) different rules for members and residents (iii) a limitation on same questions being raised in the last 6 months

Council	What notice for questions is provided	How are answers provided	Is a written copy of question required?	Is there a 6 month exclusion to asking the same question	Supplemental questions?
Shropshire	By 12 noon 3 WD prior to meeting	Question must be raised and answered at the meeting only. In person or reading out written question	No	Yes (rule 14.5)	No for residents (unless chairman agrees rule 14.8). Yes for members, no qualification time required (rule 15.9).
Telford & Wrekin	By 5pm 3 WD prior to meeting (members). By 5pm 7 clear WD prior to meeting (residents)	Question can only be raised in person at the meeting.	No – but person must be in attendance at meeting to raise question.	States that repeat questions cannot be raised (rule 7.8)	No - residents Yes - Members only (rule 7.3)
Redditch	5 clear WD notice (rule 9.3)	Question must be raised and answered at meeting. Can be read out.	No unless the person is present at the meeting.	Yes (rule 9.5 (b))	Yes (rule 9.8)
Worcestershire	By 9am 1 WD before meeting (public)	Question must be raised and answered at meeting. Can be read out.	Yes – in outline	Yes (rule 15.5(c))	No – residents only in exceptional circumstances

	By 12pm 9 calendar days before meeting (at Council meetings) (for members)	Chair has discretion whether to accept the question at the meeting.	Yes – for council meetings		Yes – in respect to member questions
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9. A working group of Audit & Governance considered whether different rules should apply for residents and councillors for supplemental questions. The alternative being that councillors could be given more allowance for ad-hoc supplemental questions as they are subject to the Councillor’s Code of Conduct. It was considered by the working group that the rules should apply equally to members and residents. However, the recommendation is that where a resident is asking a supplementary question, it must first be submitted in writing even if they intend to ask the question in person at the meeting – this then the same as that for Scrutiny Committees.

10. The working group raised an issue about late reports or late responses to questions and the impact that would have on timescales. As such an ability to raise questions up to 1 working day after a late report or initial response has been added.

Appendix 2 – Scrutiny Management Board & Substitutes for chairs

11. Ordinarily, a group leader may elect to appoint a substitute to a particular meeting or committee if the original appointee from that group is unable to attend the meeting or committee. This facilitates the Council’s duty to give effect to the wishes of political groups for the purposes of political balance.
12. Scrutiny Management Board is constituted differently to other panels. It consists of chairs of the other scrutiny panels and other members to maintain political balance. If a chair of a panel is unavailable, then there is a question whether the substitute should be the vice chair of the panel (meaning that SMB is not politically balanced if the vice chair is from another group) or the group appoints a replacement chair (maintaining political balance on SMB).
13. The recommendation is that the vice chair should be the substitute at SMB even if SMB is not politically balanced for a single meeting. If a chair of a scrutiny committee is unavailable for a longer period (for example due to illness), then it is always open to the political group to appoint a replacement chair for that longer basis.
14. The alternative is that for a single SMB meeting, a member possibly unfamiliar with the detail of the underlying scrutiny committee is appointed as chair of that committee by the relevant group. That member then attends SMB. After the return of the existing chair, the group then has to remove the substitute and reappoint the existing chair.
15. The proposed amendment is to change paragraph 4.1.169 to reflect the above.

Appendix 3 – Planning Rules

16. Part 4 Section 8 of the Constitution contains rules that apply during consideration of a planning application.
17. The rules do not include procedural points where a matter is adjourned or deferred between meetings. Ordinarily, this is to allow a particular point to be investigated further or to allow a site visit.
18. It is unclear from the current rules if a matter is adjourned (whether before or after some substantive consideration of the application) whether only the members who have attended both meetings are permitted to vote on the application. In addition, it is unclear what happens if a site visit is called and a member cannot make that meeting – are they permitted to consider the application even though they have not visited the site despite the first meeting deciding it was important to do so.

The recent Supreme Court case of [Spitalfields](#) confirmed that it was acceptable for a council to determine in its standing orders how to regulate its internal proceedings. It is therefore correct that the council can decide how and which members can consider and vote on matters.

19. The Spitalfields case upheld a restriction for deferrals. Tower Hamlet's standing orders restricted voting to members who had been in attendance at both meetings even though it limited councillor participation.
20. Paragraph 42 of schedule 12 and section 106 of the Local Government Act 1972 allow the council to make standing orders to regulate proceedings. The proposal is to add clarity in respect to deferred applications and/or where site visits where the members at the deferred (final) meeting were not present at the previous meeting.
21. The proposed amendment is that members present at the deferred (final) meeting are able to consider and vote on application even if they did not attend the initial or a site visit. This is contingent upon the members at the deferred meeting reviewing and reconsidering all relevant facts and information in full. That is, the entire matter is reconsidered again in its entirety and the officers report includes all relevant considerations including points raised at the initial meeting and during any site visit. This means that the final meeting, the members present are there to consider all material considerations.
22. The recommendation is that new paragraphs 4.8.36 to 4.8.41 are added to Part 4 Section 8 Planning Rules.
23. In addition to the above, planning applications are approved by a planning committee on the basis that a condition (such as a satisfactory report being received or a s106 agreement being completed) is satisfied before the planning permission is issued by officers. Recent 2025 cases of [Greenfields \(IOW\) Ltd](#) and [Wild Justice](#) demonstrates that conditional decisions must still comply with the requirements of the 100D(1) of the Local Government Act 1972 (background papers) and publicity requirements in para 40 of the Development Management Procedure.
24. There is also a further amendment in respect to verbal updates to committee that reflects the working practices (paragraph 5.6.59).

Appendix 4 – Health and Wellbeing Board

25. The board approved changes to its terms of reference on 25 September 2023. It resolved that 'The Health and Wellbeing Board considers the revised terms of reference at appendix 1 and provides comments before [being ratified by Full Council](#)'.
26. The terms of reference document included changes to the membership of the board, principally the addition of a nominated representative from the Voluntary and Community Sector and updates to organisation titles. Council is requested to note the changes in the terms of reference which are mainly technical changes that have been delegated to the Monitoring Officer.
27. The terms of reference document resulted in an incongruity by identifying that membership of the board includes:

'A nominated representatives from the Integrated Care Board'

28. This is reflected in the council's constitution (paragraph 2.8.9, bullet point 8). It is uncertain whether the board intended this to read 'Two nominated representatives' or 'A nominated representative' from the Integrated Care Board. However, it is noted in paragraph 2.8.10 that a vice chairperson was to be appointed from '...one of the board members representing NHS Herefordshire and Worcestershire Integrated Care Board...'
29. Up to and including the meeting on 25 September 2023, NHS Herefordshire and Worcestershire Integrated Care Board appointed two representatives; prior to July 2021, two representatives (the chair and the managing director) were appointed by its predecessor, NHS Herefordshire and Worcestershire Clinical Commissioning Group.
30. No change in the number of seats for the Integrated Care Board was highlighted within the covering report or discussed during the meeting.
31. Council is recommended to confirm that the membership should provide for 'Two nominated representatives from the Integrated Care Board'.
32. The terms of reference document identified arrangements for the appointment of the vice-chairperson as follows:

'The Vice-Chairman of the Board shall be the chair of the One Herefordshire Partnership. Should this be an already identified member of the board, that person shall also represent their respective organisation.'
33. However, the council's constitution (paragraph 2.8.10) was not updated to reflect this and it currently reads:

'...one of the board members representing NHS Herefordshire and Worcestershire Integrated Care Board will be appointed vice chairperson annually by the board.'
34. However, the revised Terms of Reference in paragraph 10 doesn't appear to reflect the original intention. For example, if the Chairperson of One Herefordshire Partnership is from an organisation with existing nomination rights, but isn't that organisations actual nominee, then the wording above would allow a further appointee by that organisation. It is considered that the original intention was to avoid this and to ensure that the Chair of One Herefordshire Partnership was appointed as the representative of the relevant nominating organisation. As such the recommendation is that paragraph 2.8.10 is modified to:

'...The vice-chairperson of the board shall be the chairperson of the One Herefordshire Partnership. Should this person be from an organisation that has the right to nominate to the Board, then that person shall also represent their respective organisation.'

35. The recommendation to Council is requested to confirm that it wishes the change identified in paragraph 2.8.10 above. This change has already been agreed by the Health and Wellbeing Board at a meeting on 15th September 2025.

Appendix 5 Special Urgency procedure

36. The proposed amendment is to paragraph 4.2.53 of Part 4 Section 2 Access to Information Rules.
37. This paragraph is concerned with the notice that needs to be provided for a key executive decision. Currently, the process simply requires the decision maker to seek consent of the chairperson of the relevant scrutiny board.
38. The concern is that currently, neither the decision maker or the chairperson has to seek guidance from statutory officer as to the appropriateness of this decision. The proposed amendment is that any request to use the Special Urgency procedure for key decisions must be made by the Monitoring Officer at the request of the decision maker. The consent of the scrutiny board must still be obtained.

Appendix 6 Procurement

39. Part 4 Section 6 (Contract Procedure Rules) currently requires two key decisions to be made in respect to procurement of a contract over £500k. This means that any decision requires at least 56 days of prior notification unless (as in practice), the decision to start a procurement then also includes a decision to delegate the award to an officer. This means that the important decision (to award) is made by an officer, but the formative and precursor decision (to start a procurement) is made by members.
40. The proposed amendment is to allow officers to commence any procurement activity (as this is not a decision to award) but an executive decision must be made to award the contract. This still allows (if required) that the decision to award can still be delegated to officers at any stage rather than requiring it to be made at the start of the procurement process. The change will still require any director to consult the cabinet member before starting any key procurement activity.
41. A second change is in respect to the use of frameworks. Audit & Governance Committee recently received an external auditor's report about strengthening capital governance arrangements. Although not directly referenced, officers are recommending that the use of external frameworks should be limited to those maintained and approved by the Council's procurement function. Should an officer wish to use an alternative framework, then such decision should only be added to the approved list by recommendation of the procurement function and authorisation by the S151 Officer and Monitoring Officer (or their deputies).

Appendix 6 Motions on Notice

42. Part 4 Section 1 of the Constitution (Council and Committee Meeting Rules) at paragraph 4.1.15 (20) is clear that motions on notice are not possible at the Annual Meeting.
43. The amendment is to allow motions on notice for the Annual Meetings **except the Annual Meeting immediately following an all-council election.**

Appendix 7 Clarification of the rules relating to capital schemes

44. Part 4 Section 7b of the Constitution provides guidance in relation to council finances. Paragraph 33 provides little information around what is required for a new (i) a capital scheme to be included within the Capital Investment Budget (the capital programme) and (ii) what is required to enable Cabinet to authorise the spend.
45. The amendment specifies that full Council will expect an outline business case to be included for any new capital spend and a full business case is required before any executive decision (whether by an officer, individual cabinet member or cabinet) to authorise the spend can be made. The change specifies that complex capital schemes can be staged and that approvals (and the supporting business cases) can also be staged.
46. A full business case for capital schemes that are considered to be ongoing, repeat or business as usual (such as IT refresh, asset & highways upgrades) is not required unless the decision maker requires such information to be presented. A decision agenda, report and minutes are still required in accordance with the Council's standing orders.

Appendix 8 Record of Operational Decisions

47. At Part 3 Section 7 (Officer Functions) provides the definition of an operational officer decision and the circumstances under which it must be recorded.
48. This includes where there is a financial sum of £50,000 or more. In addition, it includes granting or revoking of a permission or license or change to an individual legal rights. This goes further than the requirements of [The Openness of Local Government Bodies Regulations 2014](#) and includes a further requirement of 'a change to a service'.
49. At Part 4 Section 6 (Contract Procedure Rules), the constitution currently requires that a Record of Operational Decision (RoOD) is published where an award of a contract is above the value of £50,000.
50. However, Part 4 Section 6 also says that an award of a contract between the value of £25,000 and £75,000 must be published as a Contract Details Notice on the Central Digital Platform, meaning that there is already provision for contracts between the value of £25,000 and £75,000 to be published.
51. Part 4 Section 7b of the constitution currently requires disposals in excess of £50,000 to be published. It is proposed this is also uplifted to £75,000 to reflect the same values as apply to publication in cases of contract awards.
52. It is proposed that in relation to Records of Operational Decisions that the limit is changed to £75,000 so that there is no need to duplicate publication of awards of contract between the value of £50,000 and £75,000.

53. The original £50,000 limit was agreed in 2014 when the regulations were introduced. Using CPI as the indicator, this figure would now be £69,733 as of December 2025. This change is therefore to align the limit to approximately the same as when the regulations were introduced in 2014 but uplifted slightly so it aligns with the threshold in Part 4 Section 6 Contract Procedure Rules between 'Medium Value ' and 'High Value' procurements
54. It is proposed that Part 3 section 7 of the constitution regarding Officer functions, is amended to reflect the above proposals.
55. Additionally, an amendment is proposed at Part 3 section 7 of the constitution not to require publication of RoODs only where decisions are:
- published on another statutorily required and publicly available register (for example a planning register), or
 - to be kept confidential to avoid compromise to the commercial position of the council or another individual or organisation under Part 5 Section 8 at 5.8.56.
56. The proposals above are detailed in appendix 8.

Appendix 9 Members Code of Conduct

57. There are two points of consideration here. The first relates to a proposal to try to simplify the task of the Council's consideration of complaints under the Code of Conduct. In 2024/25 almost 88% of code of conduct complaints received by Herefordshire Council were complaints against members of Parish and Town Councils ('PTCs'). Of this number, over 40% of all complaints against PTC members were raised by members of the same PTC. It appears that the Code of Conduct process is routinely being used to resolve differences of opinion or expression between members.
58. With the agreement of Herefordshire's Council's Standards Panel, proper officers of the PTCs and Group Leaders within Herefordshire Council were notified of a possible change, by way of a proposal for changes to the published arrangements, as they relate to Parish and Town Councils, which were sent to all PTCs on 2nd October 2025.
59. PTCs have been asked to consider a proposal for a Local Resolution Protocol ('LRP'). Herefordshire Council does not intend to insist that a LRP is adopted or specify what or how a LRP should be conducted. It shall be for each PTC to determine the content. Templates would be provided as assistance, but it would be the PTC's decision whether to use this route to resolution of complaints.
60. The proposal is that, in relation to a complaint against a PTC Member raised by another Member, or raised by members of the public/officers of a PTC which alleges a breach of the code of conduct in relation to minor matters (such as a lack of respect, or bullying or harassment, or bringing the authority into disrepute only) then where a PTC has a LRP, Herefordshire Council will allow them time to resolve this without it going to the formal process.
61. The intention is that Audit & Governance be delegated the authority to change the arrangements for dealing with complaints. Further that such includes the ability to include a LRP step when a PTC wishes to try and resolve their complaint.

62. The second point is a proposal to enable the Monitoring Officer to make a finding of technical breach of the Code of Conduct, without the need for full investigation, in appropriate circumstances.
63. Currently, the Arrangements for dealing with complaints about the Code of Conduct say that a finding of breach is only permitted following a formal investigation. This means that in a case where a technical breach is clear but there is no public interest in proceeding to formal investigation, the arrangements result in the Monitoring Officer taking no further action, but the fact of a breach is not acknowledged. In such cases, the Monitoring Officer will sometimes offer advice, but it is suggested that a more overt noting of technical breach would be appropriate. This often leads to a complainant feeling that the Council simply does not wish to look at it further even though there is a breach.
64. The recommendation that technical breaches determined by the Monitoring Officer at the Initial Assessment stage are not to be published. This is to continue to encourage early agreement and settlement.
65. Feedback from PTCs on this proposal has been mixed. Some support this proposal with some saying this simply reflects their working practices in any event. Others support the concept but do not wish to adopt this. The majority of responses believe that the current process should continue. The recommendation to Council can facilitate all these views as the intention is not to force any PTC to adopt a LRP if they do not wish to do so – the proposal is not to make it compulsory.
66. The recommendations are that Council approves the amended Arrangements for dealing with complaints about the Code of Conduct for members at Appendix 9.

Appendix 10 Political Group Consultation

67. It is proposed that the scope and purpose of Political Group Consultation is formalised and described in the Constitution.
68. A 'political group' is one which has been constituted in accordance with Regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990 and consists of at least two Members.
69. A political group consultation ('PGC') provides a political viewpoint to inform officers' preparation of key decision reports and demonstrates the Council's commitment to encourage cross party engagement in decisions before they are taken.
70. All key decisions require a PGC to be undertaken unless:
 - a. An all-member briefing has already occurred (although the political group can make representations after the meeting); and/or
 - b. The decision has been deemed not a key decision under a delegation to an officer as the outcome of a key decision; and/ or

- c. The decision maker is key but has no discretion (e.g. decision to receive a grant with conditions to spend or approve a plan as a consultee).

- 71. At the PGC questions should be focussed around the 'political' positions, enabling attending cabinet member(s) to respond with their position on the matters under consideration. Officers should focus on technical explanation/evidence underpinning the decision.
- 72. The PGC should be recorded and made available to allow members who cannot attend to review afterwards, and a summary of the key political positions should be captured by the officers following a PGC, which is added to the consultation section of the decision report.
- 73. Appendix 10 indicates the proposed amendment to the constitution at Part 2 Article 2 to reflect the above summary.

Community impact

- 74. The proposals do not have any community impact, nor do they link to other local or national strategies or policies. They are proposals that fall within Council's powers to make local arrangements.

Environmental Impact

- 75. The proposals do not have any environmental impact.

Equality duty

- 76. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 77. The equalities assessment has been completed and could that there is a no/low impact for equalities.

Resource implications

- 78. There are no resource implications to the proposed amendments.

Legal implications

79. Legal implications are referred to in the sections above, where relevant.

Risk management

80. There are no risks arising directly from the report.

Consultees

81. Relevant lead officers were consulted on 10th November 2025.

82. Group Leaders have been consulted 10th November 2025 and 3rd February 2026. The Green Group was consulted on 9th December 2025.

83. Audit and Governance Committee was briefed on 15th January 2026.

84. In relation to the change to the Standards arrangements, the proper officer of each parish or town council was notified on 3rd October 2025.

85. Audit and Governance reconsidered this Report on the 24 March 2026.

Appendices

Appendix 1 Process for questions from the public

Appendix 2 Scrutiny Management Board

Appendix 3 Planning Rules

Appendix 4 Health and Wellbeing Board

Appendix 5 Special Urgency procedure for executive decisions

~~Appendix 6 Procurement Rules~~

Appendix 6 Council Procedure Rules

Appendix 7 Capital schemes and virements

Appendix 8 Records of operational decisions (RoOD)

Appendix 9 Code of Conduct

Appendix 10 Political Group Consultation

Background papers

None

Useful links:

[Part 4 Section 1 Council and Committee Meeting Rules.pdf](#)

[Part 4 Section 8 Planning Rules.pdf \(herefordshire.gov.uk\)](#)

[Part 2 Article 8 Planning licensing and other functions.pdf](#)

[Part 4 Section 2 Access to Information Rules.pdf](#)

[Part 4 Section 6 Contract Procedure Rules.pdf](#)

[Part 1 \(Part 4 Section 7b\)](#)

[Part 3 Section 7 Officer Functions.pdf](#)

[Part 5 Section 8 Public participation guide.pdf](#)

[Arrangements for dealing with complaints about the Code of Conduct for Members V1.1 June 2025.docx](#)
[Part 2 Article 2 Councillors.pdf](#)