

**COUNCIL
28 NOVEMBER 2024**

CONSTITUTION UPDATE

Responsible Cabinet Member – Councillor Stephen Harker, Leader

**Responsible Director – Elizabeth Davison,
Executive Director of Resources and Governance**

SUMMARY REPORT

Purpose of the Report

1. To approve changes to the Council’s Constitution with effect from 1 January 2025.

Summary

2. The process for reviewing the constitution started earlier in the year and a number of proposed amendments which are mostly what might be described as general housekeeping and updating rather than fundamental change are proposed.
3. The proposed changes are set out in the **Appendix**.
4. There is also commentary and explanation in the main body of this report on matters requiring additional detail and consideration.
5. The updates and amendments, detailed in the report and appendix will ensure that the Constitution remains up-to-date and fit for purpose.

Recommendations

6. It is recommended that:
 - (a) The changes to the Constitution as detailed in this report, unless otherwise stated, are approved to take effect from 1 January 2025.
 - (b) Subject to confirmation from the Disclosure and Barring Service that they will facilitate enhanced Disclosure and Barring checks, the Monitoring Officer is delegated to move forward with enhanced checks for Councillors appointed to serve as Cabinet members or on Children’s and Young Persons Scrutiny Committee, Adults Scrutiny Committee or Corporate Parenting Panel.
 - (c) The Monitoring Officer is delegated to update the Constitution to reflect the changes identified.

Reasons

7. The recommendations are supported by the following reasons:
- (a) To ensure that the Constitution is clear, accurate and up-to-date; and
 - (b) To give effect to legislative changes.

**Elizabeth Davison,
Executive Director of Resources and Governance**

Background Papers

The Constitution of the Council

<https://democracy.darlington.gov.uk/ieListDocuments.aspx?CId=202&MId=284&Info=1>

Disclosure and Barring Service [Disclosure and Barring Service - GOV.UK](#)

Legislation and guidance as referenced in the Report.

Luke Swinhoe: Extension 5490

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| Council Plan | An up to date and clear Constitution should contribute to the decision making and governance arrangements and help members and officers to deliver the Council plan |
| Addressing inequalities | There is no direct impact on inequality. |
| Tackling Climate Change | There is no impacts on climate change. |
| Efficient and effective use of resources | Improving the clarity of the Constitution will with help with efficiency |
| Health and Wellbeing | There are no direct issues relating to Health & Wellbeing. |
| S17 Crime and Disorder | There is no direct impact on Crime and Disorder. |
| Wards Affected | There will be no direct impact on any particular ward. |
| Groups Affected | There will be no direct impact on any particular group. |
| Budget and Policy Framework | Amendments to the Constitution need to be approved by Council. |
| Key Decision | This is not a Executive Decision |
| Urgent Decision | This is not an Executive Decision |
| Impact on Looked After Children and Care Leavers | This report has no impact on Looked After Children or Care Leavers |

MAIN REPORT

Information and Analysis

8. The Council's Constitution prescribes the framework for Council decision making and the procedures that are followed.
9. Some updating of the Constitution will be needed from time to time and there are also a number of updates and changes proposed to ensure that the overall Constitution remains up-to-date and fit for purpose.
10. All of the proposed changes are set out in the **Appendix**. Further additional information and detail about particular areas of change is set out below:

Additional information

11. The headings below correspond to the headings in the Appendix.

SUMMARY AND EXPLANATION

Code of Conduct - Criminal Records Checks for Councillors

12. The Council does not currently have a requirement that members should undergo criminal records checks upon being elected to office.
13. Candidates standing for election as a councillor are required at the nomination stage to declare that they are not disqualified from standing for office. Making a false statement on a nomination form is a criminal offence. A candidate is disqualified if on the day of nomination and polling day, if
 - (a) They had been sentenced to three months or more imprisonment (including a suspended sentence), without the option of a fine, during the five years before polling day (and the period allowed for appeal of the conviction has passed. They are not disqualified while appeal against conviction is underway);
 - (b) They are subject to the notification requirement or order under the Sexual Offences Act 2003, and the ordinary period allowed for making an appeal or application in respect of the order or notification has passed (they are not disqualified while appeal against disqualification is underway). This applies to a person who is subject to any relevant notification requirements or relevant order made on or after 28 June 2022;¹
 - (c) They are subject to bankruptcy restrictions order or interim order;
 - (d) They have been disqualified under the Representation of the People Act 1983 for an illegal practice (three years from conviction) or for a corrupt practice (five years from conviction);

¹ S.81A Local Government Act 1972, as amended by the Local Government Disqualification Act 2022

- (e) They have been convicted of an intimidatory criminal offence motivated by hostility towards a candidate, future candidate or campaigner or holder of a relevant elective office under the Elections Act 2022 (five years from conviction);
 - (f) There are also disqualifications for staff employed by the local authority they intend to stand for and for people working in politically restricted posts.
14. In January 2024, the Minister for Local Government, wrote to local authorities urging that enhanced Disclosure and Barring Service (DBS) check are undertaken for all councillors being considered for appointment to any committee which discharges education or social services functions. This was one of the suggestions that had been made by an Independent Review of the Disclosure and Barring Regime carried out by Simon Bailey in April 2023. [Criminal record checks for councillors: letters to local authorities and the Local Government Association - GOV.UK](#)
15. This suggestion has been considered. While all Councillors are eligible to have a basic DBS check, the ability to have enhanced checks is more limited. The Safeguarding Vulnerable Groups Act 2006, Schedule 4, Part 1, 1 sets out a number of roles that people may perform (regulated activity) that brings them into contact with children that would enable an enhanced DBS to be carried out Safeguarding Vulnerable Groups Act 2006 ([legislation.gov.uk](#)). Essentially this is about working with children. [Safeguarding Vulnerable Groups Act 2006 \(legislation.gov.uk\)](#). The Safeguarding Vulnerable Groups Act 2006, Schedule 4, Part 1, 4 used to specify that some councillors who are members of an executive or committee discharging any education functions, or social services functions, will be eligible for Enhanced DBS checks. However Schedule 4, Part 1, 4 of the Safeguarding Vulnerable Groups Act 2006, was repealed by the Protection of Freedoms Act 2012. The eligibility of local authority members to have enhanced DBS checks based on their involvement in decision making functions would appear to be not currently available.
16. It is suggested that all members are asked to undergo a basic check (rather than reference enhanced DBS checks). A basic DBS check costs £21.50, so the cost for all members would be £1,075. It is suggested that this is carried out following election to office (if a DBS check was undertaken this annually, there is an annual update service of £16 per application). Consideration of the frequency of DBS checks is not just about the application fee but will also involve resource implications for officers and members involved in the DBS process. Given that no DBS checks were undertaken following the 2023 elections, the suggestion is that following agreement to adopt this change we will then proceed with DBS checks for all current members.
17. So far as enhanced DBS checks, the Monitoring Officer has written to the Disclosure and Barring Service for clarification of their approach. Subject to confirmation from the Disclosure and Barring Service that they will facilitate enhanced checks, it is suggested that the Monitoring Officer is delegated to move forward with enhanced DBS checks for Councillors appointed to serve as Cabinet members or Children's and Young Persons Scrutiny Committee, Adults Scrutiny Committee or Corporate Parenting Panel. Enhanced checks cost £49.50 and the extra cost for those members to have an enhanced checks will be £952.

18. Consideration is also needed about how any material that arises from a DBS check is dealt with. This will depend on precisely what is disclosed. In the first instance it is suggested that the Monitoring Officer should evaluate the material to consider what action is necessary. This might be disclosure to the police (for instance, if the information revealed would have meant the member was ineligible to stand as a candidate) or if there are safeguarding concerns for a risk assessment to be carried out and appropriate safeguarding measures put in place.

Rights and Responsibilities of the Public

19. Members of the public are entitled to photograph, film, record, broadcast meetings of the Council. This right is set out in the Openness of Local Government Bodies Regulations 2014. Details of this entitlement are included in the constitution. The constitution also has provisions that regulate conduct at meetings. It has been thought helpful to clarify matters for persons who photograph or film meetings. This is not to stop them from carrying out this activity but just to ensure that there is no misunderstanding about the role of the person chairing the meeting, to ensure that the meeting proceeds without being disrupted by the conduct of persons attending.
20. A Protocol has also been drafted to provide some additional guidance to persons attending meetings who intend to film, photograph or record during the meetings. This should make it easier for people who want to do this, to understand the expectations but also to members and officers to ensure that expectations are clear and that proceedings run smoothly. There are particular considerations concerning the removal of recording equipment should a meeting move into private session and about the public and young persons being filmed or photographed. The Protocol is referenced under the 'Access to Information Procedure Rules' heading in the Appendix and is set out in 4.12 of the Codes and Protocols section of the Appendix.

The Decision Making and Scrutiny Committee Working Group

21. Members will be aware that the Decision Making and Scrutiny Committee Working Group started meeting in July 2024 to consider and review the operation of scrutiny committees and wider Council decision making.
22. Members of the working group are currently looking at a number of key themes concerning the Council's scrutiny function; work programming; meeting format; member awareness, engagement and training; public engagement; officer engagement and resource.
23. The Working Group also plans to look at the following aspects of Council decision making: Reports; Questions (Members and Members of the Public); Time Limits; Set-Up and Recording; Accessibility
24. The output from the Working Group is likely to include a number of recommendations and further changes to the constitution will be needed. Depending on the nature of any proposals, wider engagement and consultation may be needed before proposals can be considered by Council, but it should be possible for a further constitution change report to go forward for decision in the 2025 municipal year.

Financial Implications

25. A basic DBS check costs £21.50 and an enhanced check is £49.50. Note - the fees quoted are the revised DBS fees applicable from the 2 December 2024.
26. The cost for all members to undergo a basic DBS check will be £1,075.
27. The additional cost for some members serving on particular committees (Cabinet members, Children's and Young Persons Scrutiny, Adults Scrutiny and Corporate Parenting Panel) to have an enhanced DBS check instead of a basic check will be £952 [34 members [8 +10+10 +6] x £49.50 but less the cost of the basic check for 34 members]

Legal Implications

28. The Local Government Act 2000 requires that the adoption of a local authority's Constitution is exercised by the Council.

Consultation

29. The Constitution update has been raised with Chief Officers and Senior Managers as part of the review.
30. An all member briefing about the proposed changes was held on Wednesday 30 October 2024.
31. On the 31 October 2024 the proposals were considered by the Efficiency and Resources Scrutiny Committee.
32. On the 4 November 2024 the Audit Committee was consulted on a proposals relevant to the Committee.
33. Concerning DBS checks, members were broadly supportive. A view was expressed of the desirability to seek enhanced DBS checks for members carrying out the particular roles that had been identified in the ministerial letter.
34. Members will note that the recommendation includes a delegation to the Monitoring Officer enabling the Council to move forward with enhanced DBS checks subject to confirmation from the Disclosure and Barring Service.
35. A number of issues were raised about filming at meetings, including the subsequent use of the material, ensuring people were not filmed during breaks in meeting, health and safety concerns about equipment and the need to ensure that members of the public, including people coming to ask questions are made aware of filming.
36. Further clarity about this issue can be given at meetings by Chairs, but also with the meeting papers and on the Council website. Some minor changes to the Protocol have also been made as a result.

37. The possibility of the Council filming meetings was also discussed. This would have resource implications, and it is something that could be further considered by the Decision Making and Scrutiny Committee Working Group.
38. Members of the Audit Committee agreed with the suggested changes to the terms of reference of the committee. It was suggested that reference if made to CIPFA which has been done.