

Report of the County Solicitor

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation

To consider the proposals as outlined at Section 5 of the Report and consider whether any changes are required to the current procedures.

1. Introduction

- 1.1 The Committee is asked to consider the current process for Notices of Motion submitted to the Council and the associated reporting back mechanism and consider whether any changes to the Council's Standing Orders are required in light of practices in other Local Authorities.

2. Current Process

- 2.1 The current process for submitting and debating motions is outlined below.

(1) A member who wishes to place a motion on the agenda of a meeting of the Council must give notice, in writing, to the Chief Executive by 9.00am on the eighth working day before the meeting of the Council at which it is to be considered. The Chief Executive will keep a record of all such motions received which may be inspected by any member of the Council.

This standing order does not apply to motions which can be moved without written notice in accordance with standing order 11.

(2) All motions submitted under this standing order will be set out on the agenda for the meeting of the Council in the order they were received. A motion may only be withdrawn — in writing — by the member who originally submitted it.

(3) A motion which has been placed on the agenda must be formally moved at the meeting of the Council by the member who submitted it or, with his/her written consent, by another member. If it is not moved it will be regarded as withdrawn unless the Council agrees to postpone it.

(4) The mover may if the Council agrees, without discussion, alter a motion provided that the alteration could have been made as an amendment under standing order 14(7).

(5) The Council shall only consider a motion if it relates to some matter on which the Council has powers or duties or which directly affects the County as a whole.

(6) At any ordinary meeting of the Council, a motion shall, after being formally moved and seconded, be passed to the Cabinet. There will then be no discussion on the motion at that meeting of the Council.

If the motion is on a matter for which the Cabinet has no remit, then it shall be passed to the relevant Committee (Local Authorities (Functions and Responsibilities) (England) Regulations 2000).

However, and subject also to standing orders 9 and 29, the Council may decide to discuss a motion at the meeting to which it is submitted if, in its view, there is sufficient reason to do so.

- 2.2 When the Cabinet minute / recommendation comes back to the Council meeting as part of the consideration / determination of the Notice of Motion, this is currently treated as an amendment. This amendment is voted upon, which then becomes the substantive motion and at that point further amendments can be submitted and the usual rules of debate apply.
- 2.3 An amendment must relate to a motion. It can refer the subject of debate to a Committee for consideration or re-consideration, leave out words, insert or add others, but must not introduce a substantially new proposal or give effect to the direct opposite of what was proposed in the original motion. In addition, when an amendment is carried, any further amendment must follow the advice above and not revert to the wording of the original motion.
- 2.4 In relation to (5) above, the current guidance is that the Council shall only consider a motion if it relates to some matter on which the Council has powers or duties or which directly affects the County as a whole.
- 2.5 Over the last several years the Council has increasingly been asked to debate and consider Motions over which the Council has varying levels of control, sometimes even no control which could be due to Government policy or they relate to other organisations and how they might operate.

3. Other Authorities

- 3.1 Most Authorities require Notices of Motion in advance of the Council meeting. This Council is eight working days but some can be as many as 10 clear working days (for example Torbay Council and Somerset County Council).
- 3.2 Many also make the distinction between Executive functions and will refer Motions to the most appropriate decision making body, for example Torbay Council clearly define Executive and Council notice of motions and the Council will only debate those motions which relate to Council functions.
- 3.3 As another example, Mid Devon District Council refer any Motion that comes within the province of the Cabinet or any other Committee, without debate, to the Cabinet or such Committee or Committees, or to such other Committee or Committees as the Council may determine, for consideration and report;

The mover of the Motion is invited to that meeting to amplify the Motion, but without any right to vote, unless they are Member of that Committee.

The Motion is only debated on the day if the Chair considers it convenient and conducive to the despatch of business.

- 3.4 Also there is a presumption in some authorities that Notices of Motion which relate to Executive functions either do not come back to the Council at all (for example North Devon District Council) or the determination of the Notice of Motion is simply announced by the Leader at the Council meeting with no further opportunity for debate (e.g. Cornwall County Council).
- 3.5 What does appear to be clear is that Motions are either submitted with a longer lead in time, for example 10 working days, to allow time to provide the Cabinet / Cabinet Members with background information in advance of meeting, or like the practice in Cornwall, that any motions debated on the day is only when there are no significant financial / legal / constitutional implications or where detailed background information is needed.

4. Motions Subject Matter

- 4.1 There have been suggestions of late that many Motions are outside of the remit of the Council, for example Government Policy or private sector organisations over which the Council has no control.
- 4.2 In a climate of diminishing officer resources, Members are asked to consider whether they wish to tighten the scope for submission of Motions. There is also a danger that the large numbers of Motions can 'swamp' other important decisions that the Council needs to make. As an example the budget meeting in February 2019 will be considering its budget alongside eight notices of motion coming back to the meeting for debate and determination.
- 4.3 As background information, attached at Appendix 1 is a list of all Motions submitted to the Council over the last three years and Members may have a view on those Motions which have the potential to influence or otherwise.

5. Suggestions for Change

Scope of Motions

- 5.1 The current scope for the submission of Motions is highlighted below.
- The Council shall only consider a motion if it relates to some matter on which the Council has powers or duties or which directly affects the County as a whole*
- 5.2 If Members felt the current description was too wide, for example the aspect which refers to 'which directly affects the County as a whole' which tends to be a catch all for any subject matter. There is opportunity to amend the current definition and one suggestion is that Motions must relate to services the Council provides, commissions, or formally contributes to, financially or otherwise through partnership working.
- 5.3 If a potential motion does not meet this requirement, the Monitoring Officer could have delegated authority, in consultation with the Chair of Council, to determine whether or not a motion is presented to a meeting of the Council.
- 5.4 Whilst this might appear to be reducing the number of motions debated by the Council, there is also the opportunity to have a bigger impact with those motions submitted.

Formally Moving Motions at Council

- 5.5 Currently, there is no provision for Members to speak on their Motion when it is first presented to the Council. The motion is, after being formally moved and seconded, passed to the Cabinet and there is no discussion. The mover of the Motion may, under Standing Order 6(6), ask the Council to debate their Motion on the day, but may then speak briefly to justify dealing with it on the day, not to speak about the subject matter itself.
- 5.6 Members may wish to revisit Standing Orders to permit the mover, after the Motion has been formally moved and seconded, to speak for up to three minutes to explain the reason for the submission of the Motion. It is then referred without any further discussion by other Members to the Cabinet or other relevant Committee.
- 5.7 Currently Standing Orders state that the mover of a motion or an amendment has 7 minutes. Under the current process, with motions being automatically referred, the 7 minutes is never utilised at that time. The seven minutes are permitted when the motion comes back to the Council, but when the mover has already had the opportunity to speak at Cabinet, Members may wish to consider if that time limit is excessive.

Motions coming back to the Council

- 5.8 Currently, when Motions come back to the Council for determination, they are treated as an amendment. The Cabinet minute if formally moved and seconded, is then voted upon. If carried, this becomes the substantive motion, and at that point other amendments can be submitted and then the usual rules of debate apply.
- 5.9 Members may wish to reconsider this current process. Whilst referring Motions to the Cabinet or other Committee works well, how the recommendations coming back from the Cabinet are treated could be revisited.
- 5.10 A suggestion for moving forward is that the view of the Cabinet or other Committee will be published in the Council agenda, as is currently the case, but this is to act as a steer for the Council from the decision making body. The normal rules of debate will apply to the Motion and votes will be taken on the motion at the end of any debate. If Members do not agree with the Motion they can simply vote it down. Of course, at any stage the Cabinet Member or indeed any other Member could suggest / move an amendment, but the advice coming back from the Cabinet is simply that (advice) and not binding on the Council in any way.

6. Conclusion / Summary

- 6.1 This Report is intended to present a series of options for revising the 'motions' process. Members are asked to consider the suggestions for change as outlined in Section 5 in relation to the scope of motions, how motions are formally moved and then how they are dealt with when they come back to the Council.

7. Financial considerations

- 7.1 No financial implications have been identified.

8. Risk management considerations

- 8.1 No unimaginable risks have been identified.

9. Equality, Environmental Impact and Public Health Considerations.

- 9.1 No equality, environmental impact or public health implications have been identified.

JAN SHADBOLT

Electoral Divisions: All

Local Government Act 1972: List of Background Papers:

None

Contact for enquiries: Karen Strahan 2264

Room No: G31, County Hal

Appendix 1

Date	Motions submitted
6 December 2018	Devon County Council and Fracking
	British Sign Language
	Devon's Housing Need
	Brexit Referendum and Economic Impacts
	Heart of the South West Local Enterprise Partnership Joint Scrutiny Committee
	Fair and Adequate Funding to Local Authorities
	Police Funding
	Declare a Climate Emergency
4 October 2018	Devon and Cornwall Police and Dorset Police Merger
	Children's Bed Poverty
19 July 2018	Outsourcing and Devon County Council Contracts
	Badger Culling and DCC Property
	Dorset & East Devon National Park
	Road Repairs and Skansa Contract
	Community Hospital Buildings
	Universal Credit
24 May 2018	Neonicotinoid Insecticides
	Traffic on A35 at Wilmington
	Gender Pay Gap in Devon
	Adult Social Care Sector - Workforce Issues
	Grammar Schools and Additional Funding
	Scrutiny Call-in and Meeting Timescales
	Customs Union and Sarah Wollaston MP Campaign
	Stagecoach Southwest and Increased Fares
15 February 2018	Accountable Care Systems
	'Sunset for the Royal Marines' and Future Resilience
7 December 2017	Southwestern Railways Consultation - New Timetables
	EU Law - Animal Sentience
	Pension Funds and Fossil Fuel Companies
	Post-Brexit Arrangements - Membership of the European Single Market and Customs Union
	Council Budgets - Vulnerable Young and Elderly Residents
5 October 2017	Plastic Free Coastlines
	Health and Adult Care Scrutiny - Community Role and Safeguarding Future Buildings and Place Based Health Services
	National Funding Formula for Schools
	Ethical Care Council
	20 MPH Speed Limits
	Plastic Free Coastlines
20 July 2017	Paris Accord on Climate Change
	Outturn Surplus and Re-allocation of Funds
	Police & Crime Commissioner
25 May 2017	N/A

27 Apr 2017	Royal Marines and Royal Navy Service Cuts
	NHS in Devon - Public Enquiry
16 February 2017	European Union Habitats Regulations
	South West Local Enterprise Partnership - Chief Executive Pay
	Anti Litter Campaigns - Deposit Scheme for Plastic Bottles
8 Dec 2016	School Funding
	Pension 'Triple Lock'
6 Oct 2016	Educational Re-organisation and Fair Funding
	Proposed Cuts to Devon Health Services and Impacts on Patients
	NHS Success Regime
	Protecting Devon's Pharmacies
	Environmental Policy Document Review
	Affordable Housing and the HOTSW Devolution Prospectus
28 Jul 2016	Hate Crime
	Transitional State Pension Arrangements for Women
	Term Time Leave and Fines for Parents
	Planning Advice from Council Officers
12 May 2016	Protecting Devon's School Crossing Patrol Service
	Education Excellence Everywhere
	Local Government Association and Academisation of Schools
	Flood Alleviation and Investment
	Barnstaple Park and Ride
18 Feb 2016	Tax Avoidance and Procurement Procedures
	Guaranteeing our Rail Future: Honouring the Promise to Devon