

Cabinet

11 April 2018



Annual Review of the Constitution

Report of Corporate Management Team Report of Helen Lynch, Head of Legal and Democratic Services Councillor Simon Henig, Leader of the Council

Purpose of the Report

- 1 To present proposals for the revision of the Council's Constitution.

Executive Summary

- 2 The Council's Constitution describes the four methods by which the Council operates: the Council, the Executive, Overview and Scrutiny, and the Committees. It also provides the framework within which each must operate by including:
 - (a) the rules and procedures to be followed by the Council and committees when conducting their business;
 - (b) the decision making powers of the Council, Executive, Committees and Officers;
 - (c) the financial and contract regulations;
 - (d) the rights of the public;
 - (e) codes of conduct for councillors and employees;
 - (f) members' allowances.
- 3 Although the Constitution has been regularly maintained and updated, it has been some years since a fundamental review of the content of the same has been conducted, and this was therefore overdue.
- 4 Members will note that the proposed Constitution is substantially reduced in length as a consequence of the content being pared back to the required elements, and duplication being removed. Although the changes look radical, in the main, they are cosmetic in nature, with no fundamental changes in policy or procedure being advocated.

Recommendations

- 5 The Leader and Cabinet are asked to:
- (a) approve the delegation of executive powers as set out in the proposed amendments to the officer scheme of delegation at paragraph 22 of the report;
 - (b) recommend that Council agree the proposed revisions to the Constitution at its annual meeting on 23 May 2018.

List of Appendices included:

- 6 Appendix 1 – implications
- Appendix 2 – proposed Constitution
- Appendix 3 – existing Constitution showing the changes proposed
- Appendix 4 – Table of Changes to the Constitution

Background papers:

- 7 None.

Other useful documents

- 8 None.

Background

- 9 Section 37 of the Local Government Act 2000 obliges local authorities operating executive arrangements to prepare and keep up to date a document which contains:
- (a) such information as the Secretary of State may direct;
 - (b) the authority's standing orders (i.e. rules of procedure);
 - (c) the code of conduct for members; and
 - (d) such information as the authority considers appropriate.
- 10 The Council must ensure that copies of the above document – which is commonly referred to as the constitution – are available at the principal office for inspection by the public at all reasonable hours, and supply a copy of the same upon request (upon payment of such reasonable fee as we may determine).

Methodology

- 11 Preparations for the annual review of the Constitution commenced in summer 2017, with Directors and Heads of Service being contacted to request that they consider what, if any, changes they believed were appropriate to the

Constitution. In addition, a comprehensive review of the entirety of the Constitution was undertaken with a view to removing any duplication and simplifying and shortening the document. Whilst the Head of Legal and Democratic Services has delegated authority to correct inaccuracies and update the Constitution, it was considered prudent to put forward all proposed changes within one review of the Constitution to avoid confusion as the authority by which changes have been made.

- 12 Members of the Extended Management Team were asked to confirm to the Governance Solicitor any changes that they wished to see made to the Constitution. Contact was also made with the relevant officers responsible for the scheme of delegations in each directorate, and their requests for amendments incorporated into the proposed Constitution.
- 13 Although the proposed Constitution is put before Cabinet as a complete suite of documents, it is important to note that some recommendations for amendments must be formally recommended to Council by the Standards Committee to Council:
 - (a) The Members Code of Conduct;
 - (b) The Member Officer Protocol.
- 14 Attached at Appendix 2 is a “clean copy” of the proposed Constitution. Appendix 3 is the existing Constitution with the proposed amendments shown as “tracked changes”. A table summarising the proposed amendments and reasons for the proposed changes is at Appendix 4.
- 15 The Employee Code of Conduct and the Employment Procedure Rules have not been reviewed as part of the review of the Constitution, save for inclusion of the new statutory role of Data Protection Officer within the Employment Procedure Rules. These will be reviewed as part of a wider review of the HR Policy Framework later this year.
- 16 Some elements of the proposed Constitution are entirely new (e.g. the glossary of terms) and have been included to aid understanding of this complex and lengthy document. Others have been re-written in their entirety (e.g. the Member / Officer Protocol and the Member Code of Conduct) with a view to simplifying the documents and removing duplication but not changing the obligations on Officers and/or Members. The fundamental principles underpinning the Constitution throughout have not been altered.
- 17 An overview of the key changes within each section on the Constitution are set out below.

Summary and Explanation

- 18 The summary and explanation section has been revised. Where possible, the language has been simplified, and a glossary of terms has been provided to aid understanding of the Constitution.

Articles

- 19 The changes proposed to the Articles are largely cosmetic and see a number of matters that previously stood alone in the Constitution being combined with a view to making the Constitution more user friendly. The proposed inclusion of the responsibility for functions (Council, Overview and Scrutiny and Executive) into Articles 4 – 6 respectively means that it will no longer be necessary to cross refer between the Articles and Part 3 of the Constitution to find details of the terms of reference and powers of the executive, Council and committees. Aside from reducing duplication and improving the user experience, this will also reduce the risk of future amendments not being captured across all relevant areas of the Constitution, thus potentially causing conflict within the Constitution.

Human Resources Committee

- 20 One of the more fundamental changes proposed is the discontinuation of the Human Resources Committee given the low level of business it has conducted recently. The HR Committee currently is responsible for:
- (a) discharging the Councils functions in relation to local government pensions, with the exception of policy formulation and review (i.e. determining early release of pension benefits and approval of early retirement / voluntary redundancy applications);
 - (b) overseeing and promoting arrangements for member development and support;
 - (c) monitoring and overseeing the Council's arrangements for meeting its responsibilities under health and safety legislation.
- 21 It is recommended that the oversight of health and safety obligations is transferred to the Audit Committee, given their existing remit to oversee statutory compliance and the promotion of best practice.
- 22 It is recommended that the determination of ER/VR applications is delegated to the Corporate Director Resources in consultation with the Cabinet Member for Social Inclusion.
- 23 It is recommended that the determination of compassionate pension cases is delegated to the Corporate Director, Resources in consultation with the Cabinet Member for Social Inclusion, having considered any representations received from Opposition Group Leaders.
- 24 Member development and support falls within the remit of the Cabinet Member for Social Inclusion. It is therefore proposed that they continue to chair the Member Development Support Group.

Officer Scheme of Delegations

- 25 This element of the Constitution has been reviewed to ensure that the legislative references are correct and up to date. Consideration has also been given to changes in the structure of the organisation, with consequential

amendments being made as appropriate. The key changes proposed are as follows:

- (a) Authority for the commissioning of external legal advice is limited only to the Head of Legal and Democratic Services so as to avoid service areas going to external legal providers without first consulting Legal Services. This is consistent with the other delegations in respect to instigating and defending legal proceedings etc.;
- (b) The Head of Planning and Assets currently has delegated authority to approve major developments up to 5,000m². However, a peer review by the Planning Officers Society recommended that this be reviewed. It is therefore proposed that the Head of Planning and Assets has delegated authority to approve major developments up to 20,000 m² or 4 hectares (subject to the call in arrangements);
- (c) It is proposed that where a Town or Parish Council wishes to exercise its right to call in a planning application to be considered by Planning Committee that they are asked to confirm their attendance at the meeting to make representations. This will ensure that where applications are called in, representatives are in attendance to make representations to Committee;
- (d) The Head of Planning and Assets in consultation with the Cabinet Member for Economic Regeneration has delegated authority to submit proposals to the Secretary of State under Regulation 7 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 for a Direction which would operate to withdraw deemed consent for the display of Letting Boards;
- (e) The existing scheme of delegation provides a wide delegation for the Head of Planning and Assets to discharge functions in relation to section 106 agreements. The revised scheme includes a specific delegation dealing with applications for monies held under section 106 Agreements to the Head of Planning and Assets in consultation with the Cabinet Member for Economic Regeneration and the relevant ward Councillors. This does not constitute a new delegation but is included for clarity.
- (f) The Corporate Director Resources delegations will be amended to reflect the proposals set out at paragraphs 22 and 23 structural changes within Resources, which have not previously been picked up in the Constitution;
- (g) Updating the delegation to the Corporate Director, Children and Young Peoples Service to exercise the Council's powers and duties in relation to the provision of social services to specifically refer to fostering and adoption.

Council Functions, Executive Functions and Joint Arrangements

- 26 As explained at paragraph 11 above relating to the Articles, the detail formerly set out in these sections of the Constitution has been incorporated into the Articles to make the same more logical. Additional details on joint arrangements have been included to ensure a consistent approach to the Council's joint arrangements.

Council Procedure Rules

- 27 The following changes are proposed to the Council Procedure Rules:

Rule 9 The revised draft incorporates all the rules for questions in one place and removes need for separate protocol for public questions at back of Constitution.

The provisions for questions from AAPs have been included for completeness.

It is proposed any Members wishing to ask a question on reports of the Executive are required to submit their question by midday 3 working days before the Council meeting. This is consistent with the requirements for Members submitting other questions to Council. It will allow sufficient time for answers to be prepared for the meeting.

Rule 9.13 It is proposed that this rule (formerly 10.7) is amended to clarify that questions which would involve the disclosure of confidential / exempt information or relate to matters which are purely of personal concern to an individual or family members are not appropriate to be raised at full Council meetings.

Rule 10.8 It is proposed that a new rule is included, which requires Opposition Groups wishing to submit amendments to the budget proposals to submit these by midday 3 working days before the Council meeting. Amendments submitted after this deadline will only be accepted in exceptional circumstances and with the approval of the Chairman, the S.151 Officer and the Head of Legal and Democratic Services. This will ensure that the s.151 Officer has sufficient time to consider whether the proposed amendment is appropriate and also enable the Head of Legal and Democratic Services and Committee Services colleagues to upload the amendments into the system and ensure that amendments are dealt with in accordance with the procedures.

Rule 12.2 It is proposed that this rule is amended so that all amendments must be in writing (currently only required in

writing if the Chairman requires it) so that Officers can arrange for amendments to be uploaded into the system and displayed on screen and there is clarity as to what is being proposed.

Rule 12.5 (e) This is a new rule, which is proposed to extend the time a member can speak on an item where 2 agenda items are considered together.

Rule 14 It is proposed that the provisions for the State of the County debate are deleted. There has only been one State of the County debate, which was in 2005, prior to LGR.

Rule 14.4 Following discussion at a meeting of the Constitutional Working Group last year, it is proposed that the requirements in relation to Recorded votes (formerly 16.4) are amended so that only 5 members are required to request a recorded vote at meetings other than Council.

28 It is custom and practice for Members to be allowed the opportunity to ask questions on reports once they have been presented. However, the rules as drafted do not currently provide for this. Strictly speaking, once an item has been moved and seconded, the proceedings should move onto debate. Under the current rules, if a Member asks or responds to a question, they have exercised their right to speak once on a motion and are unable to speak again.

29 It is therefore proposed that the rules of debate are amended to allow Members an opportunity to ask / answer questions before speeches on the motion. Asking / answering a question will not prevent a Member from subsequently making a speech on the motion.

Access to Information Rules

30 The rules in relation to the access by Members to private reports have been simplified so that they are easier to understand. The rules and principles otherwise remain unchanged.

Executive Procedure Rules

31 The revised draft incorporates the rules for the public asking questions at Cabinet meetings so that these can be removed from the back of the Constitution. The current Constitution does not include the rules for Members asking questions at Cabinet, which are circulated separately at the start of each municipal year. The revised draft incorporates these provisions for clarity but the rules themselves remain unchanged. This inclusion of rules for questions is consistent with the approach taken with the Council Procedure Rules.

Overview and Scrutiny Procedure Rules

- 32 Amendments were made to the scrutiny committees in 2017 and therefore the changes to these rules largely reflect those amendments.
- 33 The most fundamental alterations are to incorporate an appeal process for those who have submitted a petition but have seen it rejected. It will be necessary to incorporate these provisions if the Petition Protocol is removed from the Constitution but retained elsewhere (see below).
- 34 Parent governor and faith co-optee involvement has now been reserved only to the Children and Young Peoples Overview and Scrutiny Committee (they previously were also nominated to the Corporate Overview and Scrutiny Management Board) at the request of the Overview and Scrutiny Team.

Financial Procedure Rules and Contract Procedure Rules

- 35 No alterations are proposed to the financial procedure rules, with only minor alterations being required for the contract procedure rules to ensure they are up to date.

Officer Employment Procedure Rules

The only changes proposed to these Rules are the inclusion of the Data Protection Officer as a statutory officer and the updating of officer declarations of interests to ensure that the expectations on officers continue to reflect those to which members are subject. Code of Conduct for Members

- 36 The Council is required to adopt a Member Code of Conduct, which is based on the Nolan Principles in Public Life. These principles are appended to the existing Code. However, in the revised draft these appear at the forefront, with the general obligations which flow from the principles following sequentially. The Code of Conduct has been amended to reflect the legislative provisions in relation to declarations of disclosable pecuniary interests and clarify the provisions in relation to “non-registrable” interests, which are now referred to as “other relevant interests”. The revised Code also includes a provision in respect of declaring gifts and hospitality. Whilst the Code has been re-written, there are no changes to the fundamental provisions / requirements on Members. Where other sections of the constitution make reference to declaration of interests, those sections have been updated to reflect the amended code of conduct for members.

Planning Code of Practice

- 37 The only change to this document are to remove duplication by deleting the provisions on declarations of interests, which are included within the Members Code of Conduct.

Highways Committee Representation Procedure

- 38 The Procedure states that evidence submitted to the Committee on the day of the meeting will not be considered. It is proposed to include a clearer deadline for the submission of evidence in advance of the meeting to ensure

that all parties have an opportunity to consider it before the meeting and avoid business being adjourned due to the late submission of information.

Protocol on Member Officer Relations

- 39 This protocol has also been re-written to remove duplication and simplify the document. However, as with the Member Code of Conduct, the key principles and respective obligations on Members and Officers remain unchanged.

Members Allowance Scheme

- 40 The Independent Remuneration Panel have already concluded their assessment of the Members Allowance Scheme and their report has been received by Council already. However, a review of the entirety of the scheme highlighted that the provisions in respect of Member access to the Local Government Pension Scheme should be removed given that as of May 2017, no member is entitled to access the scheme. As part of the review, consideration was also given to whether outside bodies listed in the Appendices to the Scheme could be referred to by type / description rather than specifically listed. However, this could lead to a lack of clarity as to which roles attract an allowance or for which members can claim expenses. These provisions therefore remain unchanged.

Removal of Documents from the Constitution

- 41 After careful consideration, it was considered that a number of documents were of use to the Council, officers and / or the public, it was not necessary for them to be maintained the Constitution. The table below sets out the proposals in relation to such documents:

Local Member Consultative Charter	If Members wish to retain this document, it can be made available on the Council's intranet page.
Confidential Reporting Code	This document will be provided via the Council's intranet and website.
Local Code of Corporate Governance	This document will be provided on the intranet and website.
Councillor Compact	The compact will be provided on the intranet and website.
Petition Protocol	This will be moved to the website and referenced in both the Council Procedure Rules and the Overview and Scrutiny Procedure Rules.
Speaking at Cabinet meetings	Incorporated into Executive Procedure Rules.
Public Questions	Incorporated into Council Procedure Rules.

to Council	
Public reporting on meetings	Incorporated into Council Procedure Rules and Executive Procedure Rules.
Civic Handbook	This document will be held by the Civic Office and included on the intranet and website.
Civic Protocol	This document will be held by the Civic Office and included on the intranet and website.
Register of Executive Members	The functions and identity of the Cabinet Portfolio holders have been incorporated into Article 6.
Members Interests	The provisions in relation to interests are included within the Members Code of Conduct. It is unnecessary to include the legislative provisions within the Constitution.
Member Role Descriptions	This information is included within the Councillor Compact and therefore do not need to sit within the Constitution.

Recommendations

42 The Leader and Cabinet are asked to:

- (a) approve the delegation of executive powers as set out in the proposed amendments to the officer scheme of delegation at paragraph 22 of the report;
- (b) recommend that Council agree the proposed revisions to the Constitution at its annual meeting on 23 May 2018.

Contact: **Helen Lynch** **Tel: 03000 269732** **Head of Legal & Democratic Services**
 Clare Pattinson **Tel: 03000 269679** **Legal Manager, Governance & Elections**
 Ros Layfield **Tel: 03000 269708** **Committee, Member & Civic Service Manager**

Appendix 1: Implications

Finance: The review of the constitution has no financial implications.

Staffing: No implications.

Risk: The Council would be exposed to a risk of challenge to its activities in the event that its standing orders (i.e. constitution) is either out of date or incomplete.

Equality and Diversity/Public Sector Equality Duty: The revision of the Constitution is not considered to have an adverse impact upon the public sector equality duty. The constitution is as accessible as possible and is regularly reviewed to ensure that equality concerns are addressed.

Accommodation: No implications.

Crime and Disorder: No Implications.

Human Rights: No implications.

Consultation: As set out in the main body of the report, relevant Council Officers have been consulted regarding any amendments to the Constitution, which are relevant to them. The Standards Committee will have the opportunity to comment on the revised Member Code of Conduct and Protocol on Member Officer Relations, with a view to recommending these to Council for approval. The Constitution Working Group have also considered the proposed amendments and their recommendations have been incorporated into the amendments before the Cabinet.

Procurement: No implications.

Disability Issues: No implications.

Legal Implications: The Council has a statutory duty to adopt and maintain a constitution pursuant to s37 of the Local Government Act 2000 as follows:

- (1) A local authority which are operating executive arrangements or alternative arrangements must prepare and keep up to date a document (referred to in this section as their constitution) which contains —
 - (a) such information as the Secretary of State may direct,
 - (b) a copy of the authority's standing orders for the time being,

- (c) a copy of the authority's code of conduct for the time being under section 51, and
 - (d) such other information (if any) as the authority consider appropriate.
- (2) A local authority must ensure that copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours.
- (3) A local authority must supply a copy of their constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.