

<b>Key Decision Required:</b>	<b>NO</b>	<b>In the Forward Plan:</b>	<b>NO</b>
-------------------------------	-----------	-----------------------------	-----------

## CABINET

**9 NOVEMBER 2018**

### REPORT OF THE FINANCE & CORPORATE RESOURCES PORTFOLIO HOLDER

#### **A.3 REVIEW OF THE COUNCIL'S CONSTITUTION**

(Report prepared by Lisa Hastings, Monitoring Officer and Ian Ford, Deputy Monitoring Officer)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

This report asks Cabinet to approve the recommended changes to the Constitution for referral onto Full Council following a review undertaken by the Portfolio Holder through a Working Party.

The main proposals cover a number of miscellaneous amendments to the Council Procedure Rules, changes required to comply with legislation and to ensure the Constitution is effective, efficient and consistent at an operational level.

The key changes to each of these documents are highlighted within the body of this Report.

##### **EXECUTIVE SUMMARY**

A Portfolio Holder Constitution Review Working Party was established following various matters being raised at previous meetings of Full Council to *“undertake a light touch review of the Constitutional Rules and Procedures highlighted by Members and Officers ensuring the governance arrangements are up to date, clear and consistent, with the outcome and recommended changes being presented to Cabinet and Council in November 2018.”*

A Portfolio Holder Working Party has undertaken a thorough review of the Constitution with the proposed revisions to the Council Procedure Rules to take effect from May 2019, and other changes to be implemented following approval by Full Council in November. The Working Party's membership included the Portfolio Holder, Councillor Stephenson, Councillor Newton, Councillor Talbot and Councillor I.J. Henderson. The subject areas reviewed were requested by the membership, other Councillors, the Standards Committee and Officers; with proposed changes being discussed and advised upon with suggested alterations being reconsidered prior to full agreement by the Constitutional Working Party.

A summary of the changes compared to the existing Parts of the Constitution are provided under each heading in the Current Position section of this report and in each case, the content has been revised to provide greater clarity, ensure effectiveness and efficient working practices for Members and Officers and checked to ensure it is in accordance with legislation, where necessary.

The Constitutional Review Working Party has agreed to undertake the 6 month review requested by Full Council on the revised committee structure, presenting the findings and recommendations to Full Council in January 2019. This work will be commenced in November.

## **RECOMMENDATION**

**That Cabinet recommends to Council:**

- (a) that the Council's Constitution be amended to reflect the proposed changes as set out in this report and the appendices attached hereto;**
- (b) with the exception of the Council Procedure Rules, all changes to come into effect immediately following approval; and**
- (c) as approved, the revised Council Procedure Rules to come into effect on 1<sup>st</sup> May 2019.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities.

### **FINANCE, OTHER RESOURCES AND RISK**

#### **Risk**

Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Council's overall governance arrangements.

### **LEGAL**

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance.

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and best practice.

### **OTHER IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

Equality and Diversity implications were considered when taking into account how the Chairman of the Council should be addressed (Article 5 – Appendix F), with the final proposal allowing the appointed Member to use their discretion on how to be addressed.

The impact of religious prayers has been considered and prayers or other religious observances are permitted business at a meeting of the Council under Section 138A of the Local Government Act 1972 (as amended by the Local Government (Religious etc. Observances) Act 2015). However, any person who wishes or is required to attend the meeting should be given the opportunity not to attend until after the observance has finished. Any observance should be at the discretion of the person running the meeting. The Monitoring Officer will provide a detailed guidance note on this specific point in due course consequently, it is not considered necessary to include anything within the Constitution on this point.

### **PART 3 – SUPPORTING INFORMATION**

#### **CURRENT POSITION**

The Working Party reviewed various areas of the Constitution and the following changes are recommended (note that references to Part numbers relate to the Constitution prior to any amendments):

**(a) Council Procedure Rules – Section 1 (Full Council)(Part 4.1 to 4.20):**

Rule 1 – Annual Meeting of the Council:

To include the appointment of up to four Member Representatives to General Assembly of the Local Government Association at the Annual meeting.

Rule 5 – Time and Place of Meetings:

Propose an earlier start time of 7pm.

Rule 9 – Duration of Meeting:

Propose a later finish time of 10.30pm.

Rules 10 and 11– Questions by the Public and Members:

Proposed changes to provide consistency between the scope of questions submitted by the public and Members and reasons for rejection. The same consistency to apply to questions and motions.

Rules 10.1 and 11.2 – Time allocated to Questions by the Public and Members:

Overall time for questions to be reduced to allow further time at the meeting for debating motions that are to be dealt with on the night. The allocated time for questions allows up to a maximum of 3 from the public and a further 3 from Members to be dealt with.

Rules 11.6 & 7 – Response and Supplementary Questions:

Electronic or written responses given by Members to questions to be provided to the Committee Services Manager on the day of the meeting to allow the response to be circulated to the questioner, Chairman, Leader and relevant officers.

Supplementary Questions must solely relate to the response received. This will enable more control over the permissibility of supplementary questions. The content of supplementary questions will no longer be included minutes to prevent this rule being abused.

Rules 12 and 14 – Motions on Notice and Not Permitted:

Proposed changes to provide consistency between the scope of motions and those not permitted with the scope of questions and reasons for rejection.

Rule 12 – Motions:

A maximum of 3 motions shall be accepted at an Ordinary Meeting, and dealt with on the night, in accordance with Rule 12.4 once moved and seconded, unless Council decides to refer the motion to the Cabinet or relevant Committee.

A maximum of 30 minutes debate to be allowed per motion, with the mover and other speakers being allowed 5 and 3 minutes respectively.

Notice of a Referral to Cabinet or the relevant Committee may be given prior to the meeting in accordance with Rule 12.5. If this is received, it will take precedence and no amendments on notice could be received. This allows a Referral to be debated upon at Council and a decision made for further consideration and/or work to be undertaken.

Notices of Amendments may be given prior to the meeting in accordance with Rule 12.5. This could assist members to consider a proposed amendment and for officers to provide advice in advance.

Rule 12.6 sets out how referred motions will be dealt with allowing an opportunity for further work to be undertaken prior to decisions being made, if necessary.

Rule 16 – Rules of Debate:

Removal of the reference to an appropriate body or an individual from amendments to motions, as this was not considered appropriate for motions with the Cabinet and relevant Committee remaining, as the suitable decision making bodies.

Any amendments to the Budget proposals must be submitted to the Council's Chief Financial Officer at least two working days before the budget meeting of Council to enable them to consider the implications for the budget.

Remove the requirement to seek the meeting's consent to alter or withdraw (unless an amendment is pending) a motion because this has not been the practice of Full Council for several years.

Closure motions to include referral to Cabinet or a Committee.

Rule 32 – Application to Committees

Rule 23.2 – Chairman standing during debate to apply to Committees and Sub-committees, so that any member speaking at the time must stop and the meeting must be silent. This application is to demonstrate further respect to the role of Chairman at Committees and Sub-Committees.

*Rule numbers throughout the Council Procedure Rules shown attached in **Appendix A1** have been amended to reflect the proposed changes.*

**(b) Council Procedure Rules – Section 2 (Committees)(Part 4.21 to 4.24):**

Rule 33 – Appointment of Members of Committees and Sub-Committees:

The Rules relating to eligibility requirements for membership of Committees and Sub-Committees be reordered. Additional requirements following good practice and guidance such as:

- Local Plan and Planning Committee membership remaining separate prior to a Local Plan being adopted;
- Membership of the Audit Committee following CIPFA Guidance; and
- How often mandatory training must be undertaken to remain a member of certain committees.

Rule 38 – Questions on Notice at Committees:

Remove the ability for members to submit Questions on Notice to Sub-Committees (such as Licensing and HR) due to the terms of reference of the sub-committees it was not considered appropriate to allow questions at sub-committees, which could be directed to the main committees.

*Proposed changes to Section 2 of the Council Procedure Rules are shown attached as **Appendix A2**.*

**(c) Access To Information Procedure Rules (Part 5):**

Rule 13 – Procedure before taking Key Decisions (Part 5.6-7):

Remove reference to the term Forward Plan as the Council has for some time been producing to all Members and on the website, notification of forthcoming key decisions or a decision that would involve the disclosure or likely disclosure of confidential information. Notifications are provided on a rolling-basis rather than monthly.

Cross referring to the definitions of Key Decisions and Confidential and Exempt Information to be included for ease of reference.

Rule 18 – Procedures Prior to a Private Meeting (Part 5.9):

To be expanded to provide all the legislative criteria for notification of private meetings.

*Proposed changes to the Access to Information Procedure Rules are shown attached as **Appendix B**.*

**(d) Overview and Scrutiny Function and Procedure Rules:**

Article 6 - Overview and Scrutiny Function:

Inclusion of 'executive' prior to 'decisions' which will be reviewed or scrutinised and those to be made.

*Proposed changes to the Overview and Scrutiny Function (Article 6) are shown attached as **Appendix C**.*

Rules 10 (Part 5.21) and 13 (Part 5.24) – Overview Procedure Rules:

Remove reference to the forward plan and replace with forthcoming executive decisions within the Procedure at Committee Meetings and Scrutiny of Proposed Decisions.

Rule 14 – Rights of Committee Members to Documents (Part 5.24):

Provide cross reference to the Access to Information Procedure Rules rather than repeat the text to ensure consistency.

Rule 17 – Call-in (Part 5.25-29):

Provide clarity that Key Decisions made by Officers are also subject to Call-in and non-executive decisions are not eligible.

Provide further information when the Mediation Process is used to resolve matters setting out operational requirements and the decision outcome where mediation is successful.

Include provisions on how a Call-in will be dealt with if the relevant Overview and Scrutiny Committee has already commented or made recommendations to Cabinet prior to a decision being made and thereby being perceived to be pre-determined through its previous endorsement. New material considerations would be required to allow a Call-in to be made.

Should the Overview and Scrutiny Committee decide, following a Call-in of an Officer Decision, to refer the matter back for reconsideration, it will be referred to the Portfolio Holder to undertake the reconsideration.

A Call-in can be withdrawn.

*Proposed changes to the Overview and Scrutiny Procedure Rules are shown attached as **Appendix D**.*

**(e) Members of the Council (Article 2):**

2.03 - Roles and Functions of all Councillors (Rights and Duties) (Part 2.3):

Additional wording to incorporate the common law position of 'need to know' in respect of rights to access information.

2.04 – Conduct (Part 2.4):

A clear statement that Members are also expected to comply with the requirements of any risk assessments issued by the Council in performance of their functions.

2.05 – Attendance (Part 2.4):

Additional wording to allow a Portfolio Holder's attendance at Cabinet to be included within the calculation and removing duplication of committee and sub-committee.

*Proposed changes to Article 2 Members of the Council are shown attached as **Appendix E**.*

When considering the 'Need to Know Principle' the CRWP decided that the Proper Officer for Access to Information should be extended to cover determinations on the application of the common law position. *Proposed changes to Schedule 4 of the Scheme of Delegation are shown attached as **Appendix N**.*

**(f) Chairing the Council and Committees (Article 5)(Part 2.10):**

Extending Article 5, which currently only applies to Chairing the Council to include:  
5.02 The Role and Function of the Chairman of a Committee:

Emphasising their roles and responsibilities;

5.03 Addressing the Chairman:

Allowing to the appointed Chairman to use their discretion and choice; and

5.04 Training of the Chairman of the Council or Committees:

Setting out an expectation that members appointed to these roles will attend training to enable them to fulfil their roles and responsibilities.

*Proposed changes to Article 5 Chairing the Council are shown attached as **Appendix F**.*

**(g) The Cabinet (Article 7)(Part 2):**

Rule 5 - Procedures for Private Meetings (Part 2.19)

Remove wording relating to process for forming Portfolio Holder Working Parties, because this is irrelevant to this rule.

Rule 7 - Procedures for Portfolio Holder Working Parties

Include a new Rule bringing together the practices referred elsewhere in the Constitution, by using the wording currently in Rule 5 and the Scheme of Delegation, but expanding the requirements to include setting terms of reference, size of membership, consultation with ward councillors and recording decisions.

*Proposed changes to Article 7 – The Cabinet (also Referred to as the Executive) are shown attached as **Appendix G**.*

**(h) Scheme of Delegation - Part 3 - Schedule 3 - Responsibility for Executive Functions**

General Principles Regarding Decision Making By The Cabinet (Part 3.27)

Include at the request of the Monitoring Officer and the Section 151 Officer wording on how the Leader can take decisions on behalf of Cabinet, which is a permitted practice under the Leader model of governance but explicit reference was previously omitted.

Part 3.35

Remove wording relating to Portfolio Holder Working Parties to be made under the new Rule 7 (Article 7), referred to above.

*Proposed changes to Executive Functions are shown attached as **Appendix H**.*

**(i) Scheme of Delegation (Non-Executive Functions) – Planning Committee and HR Sub-Committee:**

Planning Committee (Part 3.15)

Additional wording to be inserted stating that any written request received from a District Councillor requesting that an application be determined by the Planning Committee, should be in accordance with the Member Referral Scheme.

The Scheme has previously been used by the Council and would be relaunched, with the wording being agreed by the Head of Planning and Monitoring Officer, in consultation with the Chairman of the Planning Committee ensuring consistency with the Public Speaking Scheme, Planning Protocol and accepted practice of ward councillors dealing with ward issues.

Human Resources Sub-Committee (Part 3.18):

The Panel currently comprises of 3 members including a member of Cabinet being the relevant Portfolio Holder for the service concerned. Additional wording is required to state “*unless that Portfolio Holder requires the Leader to appoint a substitute for them because they will be unable to attend*”.

*Proposed changes to the Planning Committee’s delegation and Human Resources Sub-Committee terms of reference are shown attached as **Appendix I**.*

**(j) Budget and Policy Framework Procedure Rules (Part 5):**

Chief Financial Officer has suggested the following amendments for the reasons set out:

Budget and Policy Framework – Rule 3: Process for Developing the Budget (Part 5.15):

To provide the opportunity for amended budget approved by Full Council to be accepted as the final decision, preventing any unnecessary delay. This could only take place, following consultation with the Chief Financial Officer and that they are able to advise on the financial implications of the amendment, at the Council meeting.

*Proposed changes to the Budget and Policy Framework are shown attached as **Appendix J**.*

**(k) Financial Procedure Rules:**

Chief Financial Officer has suggested the following amendments for the reasons set out:

Financial Procedure Rule 6.3.5: Virement Limits and Approvals (Part 5.40):

Delete Table (a) relating to virements from employee costs to temporary agency staff estimates, because these are items of expenditure within the General Fund and HRA and would be treated in accordance with table (b) on Part 5.41. Decisions regarding these virements would still highlight the types of expenditure.

Financial Procedure Rule 14: Investments, Loans and Borrowing (Part 5.57):

New wording to reflect the new CIPFA Guidance issued in 2018 on respect of Treasury Management.

*Proposed changes to the Financial Procedure Rules are shown attached as **Appendix K**.*

**(l) Property Dealing Procedure – Part 5.62:**

Including a small amendment to exclude arrangements for utilities to be provided on Council owned land from the Property Dealing Procedure, due to the position that any terms for the provision of utilities is fixed by the service providers.



**(m) Part 5 – Procurement Procedure Rules:**

Section 4.2.2 – Procurement over £10,000, but not expected to exceed £50,000 (Part 5.71):

Insert within paragraph (v) *‘for £25,000 and above’* at the end of the first sentence, this will make the distinction that the standard contract is only required when seeking quotations over £25,000 being consistent with our requirements to use Contract Finder.

**OTHER MATTERS CONSIDERED:**

The Standards Committee had requested that the Constitution Review Working Party (CRWP) to consider whether attendance to mandatory training sessions for committees should be linked to Members allowances. Advice was provided that this would only be feasible through amendments to the Members Allowances Scheme and recommendations could be put forward to the Independent Remuneration Panel to research this matter further, should the CRWP decide to do so. After discussing the issue in detail, the CRWP agreed that Members failing to attend mandatory training sessions could be resolved through the Group Leaders ensuring that members appointed to committees were able to commit to the additional training required to fulfil their roles.

Some members had raised with the Monitoring Officer whether the Council’s arrangements in requiring individuals to observe prayers at the Full Council meeting was lawful following the High Court challenge in 2011 and whether an Equality Impact Assessment had been undertaken. The Monitoring Officer confirmed the legal position and highlighted, that individuals should have the choice whether to observe religious ceremonies at all times. For those Members, Officers or the public who did not wish to take part in prayers they should be allowed to do so without further questions. The CRWP agreed that the Constitution did not require amendment on this matter but requested the Monitoring Officer to issue guidance to all members.

Following recent discussions between various Members regarding practices for dealing with ward issues, the CRWP considered guidance issued to Members by other elected Members at another Council, which was regarded as good practice. It was agreed that the Constitution did not require any amendment on this point, but the guidance could be used as part of the induction programme for elected members following the elections in May 2019. The Monitoring Officer was requested to take this forward.

**BACKGROUND PAPERS**

There are no background papers (as defined by the Local Government Act 2000) arising from this report.

**APPENDICES**

**A.3**

<b>APPENDIX A1</b>	<b>Part 4</b>	<b>Council Procedure Rules – Section 1</b>
<b>APPENDIX A2</b>	<b>Part 4</b>	<b>Council Procedure Rules – Section 2</b>
<b>APPENDIX B</b>	<b>Part 5</b>	<b>Access To Information Procedure Rules</b>
<b>APPENDIX C</b>	<b>Article 6</b>	<b>Overview and Scrutiny Function</b>
<b>APPENDIX D</b>	<b>Part 5</b>	<b>Overview and Scrutiny Procedure Rules</b>
<b>APPENDIX E</b>	<b>Article 2</b>	<b>Members of the Council</b>

<b>APPENDIX F</b>	<b>Article 5</b>	<b>Chairing the Council and Committees</b>
<b>APPENDIX G</b>	<b>Article 7</b>	<b>The Cabinet</b>
<b>APPENDIX H</b>	<b>Part 3</b>	<b>Scheme of Delegation (Executive functions)</b>
<b>APPENDIX I</b>	<b>Part 3</b>	<b>Scheme of Delegation – Planning Committee and HR Sub-Committee</b>
<b>APPENDIX J</b>	<b>Part 5</b>	<b>Budget and Policy Framework Procedure Rules</b>
<b>APPENDIX K</b>	<b>Part 5</b>	<b>Financial Procedure Rules</b>
<b>APPENDIX L</b>	<b>Part 5</b>	<b>Property Dealing Procedure</b>
<b>APPENDIX M</b>	<b>Part 5</b>	<b>Procurement Procedure Rules</b>
<b>APPENDIX N</b>	<b>Part 3</b>	<b>Scheme of Delegation (Proper Officer functions)</b>