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

## **A.3 APPENDIX S**

### **CABINET**

**20 MARCH 2020**

#### **REPORT OF THE CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER**

##### **A.5 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 for Corporate Finance and Governance through a Working Party constituted for this purpose.

The main proposals cover a number of miscellaneous amendments to the Council and Overview and Scrutiny Procedure Rules, changes required to comply with legislation, revised statutory guidance 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**

Cabinet, at its meeting held on 8 March 2019 (Minute 131 refers), in considering whether to recommend to Council certain revisions to Part 4 of the Council's Constitution (i.e. the Council Procedure Rules Sections 1 and 2) decided, inter alia, that:-

*“(b) a mandatory review of the revised arrangements be undertaken, commencing six months from 1st May 2019.”*

Following a delay caused, in large part, by the calling of the Parliamentary General Election in late Autumn 2019, the Review of the Constitution Portfolio Holder Working Party (CRWP) was re-established in January 2020 to conduct the review outlined above and to also consider other various matters that had arisen during the course of the summer and autumn of 2019.

The CRWP's membership included the Portfolio Holder and Councillors Allen, Barry, Broderick, Coley, I J Henderson, Newton, M E Stephenson, Talbot and Wiggins. The subject areas reviewed were requested by the Overview and Scrutiny Committees following their consideration of the new statutory guidance, the Standards Committee, the Leader of the Council, other Councillors or Officers; with proposed changes being discussed and advised upon with suggested alterations being reconsidered prior to full agreement by the CRWP.

A summary of the proposed changes compared to the existing Parts of the Constitution is 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 both Members and Officers and also to ensure it is in accordance with legislation, where necessary.

Following the conclusion of the Chief Executive's senior management restructure, which is due to take effect from April 2020, a number of revisions will be required to the Constitution and Scheme of Delegation to ensure that officer titles and responsibilities are correctly reflected. The Monitoring Officer will make these minor changes to the Constitution in accordance with the authority provided to her within Article 15.

## **RECOMMENDATION**

### **1. 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 (with the exception of Appendix S which relates to executive functions);**
- (b) that all changes come into effect on 1<sup>st</sup> April 2020;**
- (c) that Group Leaders be commended to strongly urge that all Members attend planning and licensing training events which would both increase the number of named substitutes that Group Leaders would have at their disposal as well as providing Members with greater knowledge of the workings of the Council that will prove useful to them in their Ward and wider representational roles; and**
- (d) that the Monitoring Officer be requested to undertake a review of the public speaking scheme for the Planning Committee in accordance with Council Procedure Rule 40, as amended.**

### **2. That Cabinet resolves:**

- (a) that the proposed changes to the Scheme of Delegation (Schedule 3 – Responsibility for Executive Functions), as set out in Appendix S, be approved;**
- (b) that the Head of Democratic Services & Elections and the Head of Legal and Governance Services & Monitoring Officer, in consultation with the Deputy Leader of the Council, the Chairmen of the overview and scrutiny committees, the Chairman of the Audit Committee and one other Portfolio Holder (to be decided by the Deputy Leader), be authorised to draft a formal Executive-Scrutiny Protocol for this Council and to submit this to the Overview and Scrutiny Committees and Cabinet for adoption;**
- (c) that the Head of Legal and Governance Services & Monitoring Officer, in conjunction with the Head of People, Performance and Projects, be requested to review the Council's Whistleblowing Policy in order to make sure that it is robust and report any necessary amendments to the Human Resources and Council Tax Committee; and**
- (e) that the Head of Democratic Services & Elections be requested to incorporate within the Member Development Scheme regular training on overview and**

**scrutiny matters (including, for example, on the clear division of responsibilities between the Council's scrutiny function and its audit function).**

## **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 15 also provides authority to the Monitoring Officer to make minor changes to the Constitution arising from changes to the organisational structure of the Council.

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.**

None

## **PART 3 – SUPPORTING INFORMATION**

### **CURRENT POSITION**

The CRWP 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 now submitted):

**(a) The Full Council (Article 4)(Part 2):**

4.01 Meanings (a) Policy Framework (Part 2.7)

To reflect the fact that the Statement of Licensing Policy (Gambling Act 2005) must, under Schedule 3 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, be considered by the Cabinet before it is submitted to Full Council.

*Proposed changes to Article 4 The Full Council are shown attached as **Appendix A**.*

**(b) Overview and Scrutiny Function (Article 6)(Part 2):**

6.02 Terms of Reference (ii) Resources and Services Overview & Scrutiny Committee (Part 2.13)

To ensure that, going forward, the Vice-Chairman of this Committee will normally be a member of a political group that is not represented on the Cabinet reflecting the practice adopted at Annual Council in May 2019.

*Proposed changes to Article 6 Overview and Scrutiny Function are shown attached as **Appendix B**.*

**(c) The Cabinet (also referred to as The Executive)(Article 7)(Part 2):**

7.08 Cabinet Procedure Rules – 1.5(ii) Who May Attend? (Part 2.17)

To reflect the fact that the Leader (or Deputy Leader) of any political group can attend Cabinet meetings, removing reference to ‘Opposition’.

*Proposed changes to Article 7 – The Cabinet (also referred to as The Executive) are shown attached as **Appendix C**.*

**(d) Officers (Article 12)(Part 2):**

12.01 Management Structure – New section d) Scrutiny Officer (Part 2.35)

To make clear that although the Council is not required to designate a Statutory Scrutiny Officer, it has designated the post of Head of Democratic Services & Elections to fulfil the role of the Council’s Scrutiny Officer.

*Proposed changes to Article 12 – Officers are shown attached as **Appendix D**.*

**(e) Scheme of Delegation (Non-Executive Functions) – Committees etc. (Part 3):**

Planning Policy & Local Plan Committee (Part 3.12 – 3.14)

To draw the distinction with the functions of the Executive, which still has responsibility for strategic planning outside of the Local Plan process and other matters in accordance with the Functions and Responsibilities Regulations.

*Proposed changes to the Planning Policy & Local Plan Committee’s terms of reference are shown attached as **Appendix E**.*

**(f) Scheme of Delegation (Non-Executive Functions) – Committees etc. (Part 3):**

Human Resources Sub-Committee (Part 3.19):

To permit the Leader of the Council to determine which Portfolio Holder serves on the Sub-Committee (rather than automatically being the relevant portfolio holder for the service concerned) and to also permit the Leader to appoint a substitute for that Portfolio Holder if they were unable to attend or as otherwise necessary.

*Proposed changes to the Human Resources Sub-Committee's terms of reference are shown attached as **Appendix F**.*

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

**4.1 The Cabinet Collectively (Part 3.29 – 3.30)**

New paragraph 10 to make clear the approval of planning policy matters that are the responsibility of the Executive such as Local Development Orders and Neighbourhood Plans (including statutory public consultations thereon).

**4.3 Additional Specific Delegations to Individual Portfolio Holders (Part 3.35 – 3.37)**

Corporate Finance & Governance Portfolio Holder – new paragraph 10 to allow the Portfolio Holder to agree the Annual Capital & Treasury Strategy for consultation with the Resources and Services Overview & Scrutiny Committee.

Leader of the Council – new paragraph 3 to allow the Leader to consider and agree responses to consultation exercises on national, regional and sub-regional planning policy issues and on other authorities' planning documents.

**4.4.1 General Responsibilities Delegated to Officers (Part 3.39)**

New paragraph 8 to authorise all Heads of Service, in consultation with the relevant Portfolio Holder, Management Team Member and the Head of Finance, Revenues and Benefits, to decide the level of the annual discretionary fees and charges for their service (including any in-year changes that may be required) for inclusion within the Council's corporate schedule of fees and charges.

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

**(h) Council Procedure Rules – Section 1 (Full Council)(Part 4.1 to 4.23):**

**Rule 1 – Annual Meeting of the Council**

To delete from Rule 1.1 the requirement that the allowances for Members must be considered at the Annual Meeting of the Council as this is not required by statute and therefore the Independent Remuneration Panel's report on the Members' allowances can be submitted to an Ordinary meeting of Council within the municipal year. Where possible, Council should approve the Members' Allowance Scheme for the forthcoming year, prior to setting the annual Budget.

**Rule 2 – Budget and Council Tax Setting:**

To incorporate a requirement that any proposed amendments to the Cabinet's budget proposals are tabled at the start of the Council meeting and also to incorporate a further requirement that copies of the Leader of the Council's budget presentation speech are also tabled at the start of the Council meeting (and is also circulated by email to all Members of the Council as soon as it is available).

**Rule 4 – Extraordinary Meetings**

Proposed changes in order to comply with paragraph 3 of Schedule 12 of the Local Government Act 1972 and to generally make the wording of this Rule clearer.

Rule 11– Questions by Members & Rule 3 – Ordinary Meeting:

Proposed changes to Rule 11.6 to amend the deadline for the Portfolio Holder's response to be given to the Questioner in advance of the meeting from 10.00 a.m. to Noon and to Rule 11.7 to refer now to questions of Clarification rather than Supplementary Questions.

Consequential amendment to Rule 3 to move Questions from Members to later in the Agenda.

Rule 12 – Motions on Notice:

A maximum of 2 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 and any and all amendments to also have a maximum of 30 minutes debate. Such time period will not now include the Opening or Closing Speeches referred to in Rule 12.4.

Any motion listed on the Agenda for an Extraordinary meeting of the Council will automatically be dealt with at the meeting in accordance with Rules 16, 19, 23, 24, 25, 28 and 29, as applicable.

Rule 16 – Rules of Debate

To incorporate within Rule 16.5 a requirement that any amendment proposed to be made to the recommendations made by the Independent Remuneration Panel (IRP) in respect of the Members' Scheme of Allowances must have been submitted to the Council's Section 151 Officer and the Monitoring Officer at least two working days before the relevant Full Council meeting to enable them to consider the legal and financial implications together with the documented reasons for departing from the IRP's recommendations. Any such amendment then deemed to be valid by the Monitoring Officer will be immediately circulated by email to all Members of the Council. Copies of such amendment(s) will also be placed on Members' tables prior to the commencement of the Council meeting.

Rule 17 – State of Tendring Statement:

To incorporate a requirement that copies of the Leader of the Council's Statement on the State of the Tendring District are tabled at the start of the relevant Council meeting (and is also circulated by email to all Members of the Council as soon as it is available).

Rule 19 – Voting

To amend Rule 19.4 (Recorded Vote) to reflect proportionately the recent reduction in the overall number of Tendring District Councillors from 60 to 48.

*The proposed changes to the Council Procedure Rules (Section 1) are shown attached as **Appendices G to M.***

**(i) Council Procedure Rules – Section 2 (Committees)(Part 4.24 to 4.29):**

Rule 40 – Schemes to Permit Members of the Public to Speak at Meeting of the Planning Policy & Local Plan Committee and the Planning Committee:

*To amend this Rule in order that, going forward, the content of these Schemes will be determined by the Full Council rather than by the Monitoring Officer (in consultation*

with the Head of Planning and the relevant Committee Chairman).

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

**(j) Overview and Scrutiny Procedure Rules (Part 5):**

Rules 10, 11 and 12 (Part 5.21 to 5.24):

Minor amendments proposed in order to more accurately reflect the current working practices of the Council's two overview and scrutiny committees.

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

**(k) Procurement Procedure Rules (Part 5):**

The Chief Financial Officer/Section 151 Officer has suggested the following amendment for the reason set out:

Procurement Procedure Rule 6.2: Exemption from Official Order Rules (Part 5.79):

Amend paragraph (h) to ensure that, whenever possible, an official order is raised for audit and recording purposes once a corporate credit card has been used.

Proposed changes to the Procurement Procedure Rules are shown attached as **Appendix P**.

**(l) Scheme for Dealing with Petitions (Part 5 – Part 5.85 – 89) & Council Procedure Rule 30 (Petitions) (Part 4.22 – 4.23):**

The Scheme has been substantially amended and revised in the light of recent operational experience. CPR 30 has been amended to reflect the revised Petitions Scheme, which includes changes to the numbers in the tiered referral mechanism, early referral to the Cabinet (if the petition relates to an executive function under the law) and a provision that any rejected will, if appropriate, be referred to the relevant department for a direct response to the lead petitioner on the issues raised.

Proposed changes to the Petitions Scheme are shown attached as **Appendix Q**.

Proposed changes to Council Procedure Rule 30 are shown attached as **Appendix R**.

**OTHER MATTERS CONSIDERED:**

**A. Statutory Guidance on Overview and Scrutiny**

The CRWP considered the following listed areas for review arising from the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities issued by the Ministry of Housing, Communities and Local Government during 2019:

1. ensuring a clear division of responsibilities between the scrutiny function and the audit function;
2. reporting findings of independent whistle blowing investigations to O & S for them to consider their wider implications;
3. consider whether TDC should voluntarily appoint/designate a statutory scrutiny officer (or equivalent);
4. consider electing the Chairmen of O & S Committees by taking the vote by secret

*ballot;*

5. *consider establishing a formal co-option scheme for O & S Committees. Also consider issue of Technical Advisers (independent local experts); and*
6. *consider creating an Executive-Scrutiny Protocol to be formally integrated into the Constitution.*

It was agreed by the CRWP that the Portfolio Holder's final report to Cabinet -

- (a) seeks a delegated authority for the Head of Democratic Services & Elections and the Head of Legal and Governance Services & Monitoring Officer, in consultation with the Deputy Leader of the Council, the Chairmen of the overview and scrutiny committees, the Chairman of the Audit Committee and one other Portfolio Holder (to be decided by the Deputy Leader), to draft a formal Executive-Scrutiny Protocol and to submit that to the Overview and Scrutiny Committees and Cabinet for adoption;
- (b) requests the Head of Legal and Governance Services & Monitoring Officer, in conjunction with the Head of People, Performance and Projects, to review the Council's Whistleblowing Policy in order to make sure that it is robust;
- (c) seeks an amendment to Article 12 (Officers) of the Constitution in order to reflect the fact that the Head of Democratic Services & Elections is the Council's scrutiny officer **[see Appendix D]**; and
- (d) requests the Head of Democratic Services & Elections to incorporate within the Member Development Scheme regular training on overview and scrutiny matters (including for example on the division of responsibilities between the Council's scrutiny function and its audit function).

#### **B. Substitute Members for Planning Committee and Miscellaneous Licensing Sub-Committee**

The CRWP discussed the current lack of trained Members who could act as substitute Members of the Planning Committee and the Miscellaneous Licensing Sub-Committee and the potential adverse impact that this could have on the consistency of decision making and the Council's reputation. The CRWP had been requested by the Standards Committee to consider a 'pool' of substitutes across political groups. After due consideration, the CRWP decided not to recommend use of 'pooled substitutes'.

It was agreed by the CRWP however, that the Portfolio Holder's final report to Cabinet recommends to Council that Group Leaders strongly urge that all Members attend planning and licensing training events which would both increase the number of named substitutes that Group Leaders would have at their disposal as well as providing Members with greater knowledge of the workings of the Council that will prove useful to them in their Ward and wider representational roles.

#### **C. Independent Remuneration Panel (IRP) Consultation Process**

The CRWP discussed the role of Members in shaping the IRP's recommendations to Council on the Members' Scheme of Allowances.

It was agreed by the CRWP that the Portfolio Holder for Corporate Finance and Governance propose to the IRP, during its current consultation on the Members' Allowances Scheme that Section 1.2 of the Members' Allowances Scheme is amended in order to reflect in greater detail the current custom and practice (which has previously



been followed in respect of the consultation arrangements) in order to document these within the review process.

#### **D. Public Speaking Scheme for the Planning Committee**

The CRWP discussed the order of speakers within the public speaking scheme for the Planning Committee and whether it should be changed, for example, in order to allow the relevant Ward Member(s) to speak last.

It was agreed by the CRWP that the Portfolio Holder's final report to Cabinet recommends to Council that the Monitoring Officer be requested to undertake a review of the public speaking scheme for the Planning Committee in accordance with Council Procedure Rule 40, as amended.

#### **E. Matters the Working Party agreed were not to be taken forward**

The following matters are those that, after consideration, the Working Party agreed that they were not to be taken forward:-

1. Chairman and/or Vice-Chairman of the Community Leadership Overview & Scrutiny Committee should be a Member from a political group that is not represented on the Cabinet.
2. Introduction of restrictions on political parties/organisations asking questions at Council meetings under Council Procedure Rule 10 (Questions by the Public).
3. Rescind the current requirement that the Minutes of the meetings of certain Committees are included for receiving and noting on the agendas for Ordinary Meetings of the Council.
4. Introduction of a provision whereby a political Group (or Deputy Group) Leader (in the event that a trained substitute member from their own group was not available) might appoint a trained substitute member from another political group on the Council to substitute for their Group's appointed member at meetings of the Planning Committee and the Miscellaneous Licensing Sub-Committee.
5. Changing the start time of Full Council meetings from 7.30 p.m. to 7.00 p.m.

### **BACKGROUND PAPERS**

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

### **APPENDICES**

#### **A.Z**

|                   |               |   |
|-------------------|---------------|---|
| <b>APPENDIX A</b> | <b>Part 2</b> | <b>Article 4 – The Full Council</b>   |
| <b>APPENDIX B</b> | <b>Part 2</b> | <b>Article 6 – Overview and Scrutiny Function</b>   |
| <b>APPENDIX C</b> | <b>Part 2</b> | <b>Article 7 – The Cabinet (Executive)</b>  |
| <b>APPENDIX D</b> | <b>Part 2</b> | <b>Article 12 - Officers</b>  |
| <b>APPENDIX E</b> | <b>Part 3</b> | <b>Scheme of Delegation – Planning Policy &amp; Local Plan Committee</b>  |
| <b>APPENDIX F</b> | <b>Part 3</b> | <b>Scheme of Delegation – HR Sub-Committee</b>  |
| <b>APPENDIX G</b> | <b>Part 4</b> | <b><u>Council Procedure Rules – Section One</u><br/><b>Rule 1 – Annual Meeting of the Council &amp; Rule 16 – Rules of Debate</b></b> |
| <b>APPENDIX H</b> |               | <b>Rule 2 – Budget &amp; Council Tax Setting</b>  |

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| APPENDIX I<br>APPENDIX J<br>APPENDIX K<br>APPENDIX L<br>APPENDIX M |                  | Rule 4 – Extraordinary Meetings<br>Rule 11 – Questions by Members & Rule 3 – Ordinary Meeting<br>Rule 12 – Motions on Notice<br>Rule 17 – State of Tending Statement<br>Rule 19 - Voting |
| APPENDIX N   | Part 4           | <u>Council Procedure Rules – Section Two</u><br>Rule 40 – Public Speaking Scheme   |
| APPENDIX O   | Part 5           | Overview & Scrutiny Procedure Rules  |
| APPENDIX P   | Part 5           | Procurement Procedure Rules  |
| APPENDIX Q<br>APPENDIX R   | Part 5<br>Part 4 | Petitions Scheme; and<br>Council Procedure Rule 30 - Petitions   |
| APPENDIX S   | Part 3           | Scheme of Delegation (Executive Functions)   |