

Key Decision Required:	NO	In the Forward Plan:	YES
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CABINET

19 FEBRUARY 2021

REPORT OF THE CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER

A.5 REVIEW OF THE COUNCIL'S CONSTITUTION

(Report prepared by Lisa Hastings, Assistant Director (Governance) & Monitoring Officer and Ian Ford, Committee Services Manager)

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 Procedure Rules, Article 10 of the Constitution and the Property Dealing Procedure in order to ensure the Council's Constitution remains 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

The Review of the Constitution Portfolio Holder Working Party (CRWP)'s membership included the Portfolio Holder and Councillors Allen, Barry, Coley, I J Henderson, M E Stephenson, Talbot, Wiggins and Winfield. The CRWP met on 18 December 2020 and 22 January 2021.

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 up to date working practices for both Members and Officers and also to ensure it is in accordance with legislation, where necessary.

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;

(b) that the previously approved provisions (i) and (ii), as set out below, should be discontinued:-

(i) Members who were following the proceedings of a meeting via the public

'live stream' should inform Officers that they were doing so via an email to democratic services or to the contact Officer listed on the agenda for that meeting and that they should send a second email when they have ceased to follow the proceedings; and

(ii) in order for that attendance referred to in (i) above to 'count' such attendance must be for a minimum period of time e.g. 30 minutes.

(c) that all changes come into effect on 28th April 2021 i.e. the day after the Annual Meeting of the Council.

2. That Cabinet resolves that:

(a) the Standards Committee be requested to examine whether a change to the Members' Code of Conduct is required in relation to Members' Declarations of Interest in virtual meetings and that, in the meantime, the Monitoring Officer be requested to issue a guidance note to Members to re-iterate that Members should adhere to Paragraph 9 of the Code and should withdraw from the meeting connection/link at the appropriate juncture; and

(b) the views and wishes expressed by the Review of the Constitution Portfolio Holder Working Party in relation to Members' training and development be endorsed and that the Head of Democratic Services & Elections be requested to take all necessary action to implement those wishes as soon as possible.

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.

The Council has adopted a Climate Change Action Plan and the encouragement of Members to opt out of the default position of receiving printed copies of the summons of a meeting (with agendas and reports) and reverting to solely receiving summons via electronic notifications is consistent with the Council's Policy of its operations becoming carbon neutral by 2030.

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) Council Procedure Rules – Section 1 (Full Council)(Part 4.1 to 4.24):

Rule 6 – Notice of, and Summons to Meeting

To make it clear that although, the default position is for a printed copy of the summons (including the agenda and any reports) for meetings are posted to a Councillor, Councillors are encouraged to opt to receive electronic versions of the agenda by notifying the Committee Services Manager of their request, where they are happy to do so.

Rule 9 – Duration of Meeting:

To make it clear that a Full Council Meeting (regardless of its start time) will last a maximum of three hours. In the event that the Chairman wishes to extend the meeting beyond three hours they will be expected to give an indication of the length of that extension and secure the consent of the Council in doing so.

*The proposed changes to the Council Procedure Rules (Section 1) are shown attached as **Appendix A**.*

(b) Council Procedure Rules – Section 2 (Committees)(Part 4.25 to 4.30):

Rule 35.1 – Meetings of Committees:

To make it clear that the business of ordinary meetings of a Committee etc. shall cease after a duration of three hours on the day on which the meeting commenced,

or such earlier, or later, time as the Chairman shall consider appropriate. In the event that the Chairman wishes to extend the meeting beyond three hours they will be expected to give an indication of the length of that extension and secure the consent of the Committee etc. in doing so. This requirement does not extend to a meeting of any committee or sub-committee which is conducting a Hearing into licensing or standards/conduct or other regulatory matters.

*The proposed change to Section 2 of the Council Procedure Rules is shown attached in **Appendix A**.*

Rule 33.3 – Training Members of the Audit, Licensing & Registration, Planning and Standards Committees

To make it clear that members of the Audit Committee must have received specific training with regard to the determination of the Council's Statement of Accounts and comprehension of Auditor reports and that members of the Standards Committee must have received specific training with regard to the Hearings Procedure and participation in Hearings.

*The proposed changes to Section 2 of the Council Procedure Rules are shown attached in **Appendix B**.*

Rule 36 – Attendance at Meetings

To make it clear that at such times as the Standards Committee (in respect of Hearings on standards/conduct related matters) or the Premises/Personal Licences Sub-Committee (in respect of Hearings on licensing related matters) exclude the press and the public and retire to deliberate and reach their decision 'in camera' only the duly appointed members of the decision making body will be allowed to remain in the meeting. Otherwise it would leave the Council open to challenge for failing to follow its adopted procedure. The Council would have to justify why it allowed another Councillor to listen and potentially influence the outcome. Statutory appeals against licensing decisions are to the Magistrates' Court and in the Monitoring Officer's view, it certainly would also be a breach of fair and natural justice

*The proposed change to Section 2 of the Council Procedure Rules are shown attached as **Appendix C**.*

(c) Article 10 - Area Committees & Forums (Community Consultation and Participation) (Part 2): (Part 2.28 to 2.35):

In order to reflect the outcome of a light touch review by Officers. The CRWP was also made aware that a more comprehensive review will be undertaken by a small officer working group of community consultation and engagement and that this could well lead to further amendments to the Constitution in due course.

*Proposed changes to Article 10 are shown attached as **Appendix D**.*

(d) Property Dealing Procedure (Part 5): (Part 5.62 to 5.64)

In order to include an express authority within the Property Dealing Procedure confirming how the Council will deal with requests submitted in accordance with the Leasehold Reform, Housing and Urban Development Act 1993, whereby a residential tenant (previously granted a lease under the Right To Buy provisions) has a statutory right to an extension of their lease under Chapter II of Part I.

*Proposed changes to the Property Dealing Procedure are shown attached as **Appendix E**.*

OTHER MATTERS CONSIDERED:

1. MEMBERS' ATTENDANCE AT MEETINGS AND COMPLIANCE WITH SECTION 85 OF THE LOCAL GOVERNMENT ACT 1972 IN THE LIGHT OF MEETINGS CURRENTLY BEING HELD REMOTELY

Council, at its meeting held in September 2020, had decided, inter alia, that:

- (i) Members who were following the proceedings of a meeting via the public 'live stream' should inform Officers that they were doing so via an email to democratic services or to the contact Officer listed on the agenda for that meeting and that they should send a second email when they have ceased to follow the proceedings; and*
- (ii) in order for that attendance referred to in (i) above to 'count' such attendance must be for a minimum period of time e.g. 30 minutes.*

At that meeting Councillor M E Stephenson had moved an amendment to the above (which was then subsequently withdrawn), namely:

"that the relevant period of time to 'count' as attendance and ensure compliance with Section 85 of the Local Government Act 1972 should be for duration of the meeting 'attended' with such requirement being formalised within the Constitution."

Following an undertaking given by the Chairman of the CRWP, Councillor G V Guglielmi, in his capacity as the Corporate Finance and Governance Portfolio Holder, the CRWP considered the matter that Councillor Stephenson had raised in his amendment.

The Assistant Director (Governance) & Monitoring Officer informed the CRWP that, at a joint meeting of the PLP and the Eastern Region Lawyers in Local Government and Monitoring Officers, this subject matter had been discussed and it had been ascertained that no other local authority had adopted TDC's practice. It was highlighted that the public would not be aware at the time of the meeting that Councillors had registered themselves as "Also Present".

It was agreed by the CRWP that the Portfolio Holder's final report to Cabinet would recommend that the previously approved provisions (i) and (ii), as set out below, should be discontinued forthwith:-

- (i) Members who were following the proceedings of a meeting via the public 'live stream' should inform Officers that they were doing so via an email to democratic services or to the contact Officer listed on the agenda for that meeting and that they should send a second email when they have ceased to follow the proceedings; and*
- (ii) in order for that attendance referred to in (i) above to 'count' such attendance must be for a minimum period of time e.g. 30 minutes.*

Consequently, Members would only be recorded as attending the remote meeting, if they were a Member of the Cabinet or Committee, there as of right through an invitation or had requested to attend for a specific purpose.

2. MEMBERS' DECLARATIONS OF INTEREST AND USE OF 'CHAT' FUNCTION IN VIRTUAL MEETINGS

It relation to Members' Declarations of Interest at virtual meetings it was agreed by the

CRWP that this matter should be referred to the Standards Committee to examine whether a change to the Members' Code of Conduct is required and that, in the meantime, the Monitoring Officer issue a guidance note to Members to re-iterate that Members should adhere to Paragraph 9 of the Code and should withdraw from the connection/link. This in the expectation that it should be fairly easy for an Officer to either re-join a Member or notify them to re-join, once the relevant item is finished.

In relation to the use of the 'Chat' function the Monitoring Officer requested the members of the Working Party to feedback to their respective Groups that the 'chat' function should be used solely to help facilitate the Chairman in running the meeting and not for any purpose that would not be permitted to take place in a 'physically present' meeting.

3. PUBLIC SPEAKING SCHEME FOR THE PLANNING COMMITTEE

The CRWP discussed feedback from Members' respective political groups on the principle of whether the order of speakers should be rearranged so that the Ward Councillor spoke last on a planning application at a Planning Committee meeting rather than the Applicant/Developer, who was currently listed last under that Committee's public speaking scheme.

The Working Party **AGREED** that –

- (a) the Planning Committee be requested to consider amending its Public Speaking Scheme and re-arrange the order of speakers to ensure that the Ward Councillor spoke last on a planning application at a Planning Committee meeting rather than the Applicant/Developer, who was currently listed last under that Committee's public speaking scheme; and*
- (b) examples of the practice used at other local authorities be provided to the Planning Committee in order to assist it in its deliberations.*

A report has been presented to the Planning Committee on 17th February 2021 and the outcome of the Committee's consideration will be provided at the meeting of Cabinet.

4. MEMBERS' TRAINING AND DEVELOPMENT

The CRWP re-iterated the views put forward by Members previously on this matter namely that:-

- Officers would re-visit the issue of Member training and development and that the covering report to Cabinet on the review of the Constitution should mention this;
- there was support from Members for E-learning and a webinar based approach especially an E-learning modular approach whereby participants had to answer Questions to a high enough success rate in order to be deemed to have sufficient knowledge of that topic and be Passed;
- Essex County Council be put forward as an approach to emulate; and
- Officers investigate a suitable mechanism for regular Member input going forward such as a cross-party Member Working Group.

MONITORING OFFICER'S REQUEST FOR AN AMENDMENT – ARTICLE 14 Part 2.49:

Since the last meeting of the CRWP, the Monitoring Officer has requested a further amendment to the Constitution relating to the completion of legal documents on behalf of the Council. Article 14 provides the requirements for Finance, Contracts and Legal Matters and includes a list of documents which are required to have the Common Seal affixed to them, in the opinion of the Assistant Director Governance. The list does not expressly provide flexibility and during the pandemic officers have had to go into the office unnecessarily or delay completion of legal documentation, which could have been avoided.

The Monitoring Officer suggests that the following words to be added to Article 14:

“The Assistant Director (Governance) is authorised to amend those documents listed in 14.05 (b)(iii), if permitted by law and it is considered necessary to do so as a result of urgent requirements and circumstances restricting access to the Council offices”.

BACKGROUND PAPERS

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

APPENDICES

A.5

APPENDIX A	Part 4	<u>Council Procedure Rules – Section One</u> Rule 6 – Notice of, and Summons to, Meeting Rule 9 – Duration of Meeting
APPENDIX B	Part 4	<u>Council Procedure Rules – Section Two</u> Rule 35 – Meetings of Committees Rule 33.3 – Training Members of the Audit, Licensing & Registration, Planning and Standards Committees
APPENDIX C		Rule 36 – Attendance at Meetings
APPENDIX D	Part 2	Article 10 – Area Committees & Forums (Community Consultation and Participation)
APPENDIX E	Part 5	Property Dealing Procedure
APPENDIX F	Part 2	Article 2 – Finance, Contracts and Legal Matters