

## CABINET

25 FEBRUARY 2022

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

#### A.4 ANNUAL REVIEW OF THE COUNCIL'S CONSTITUTION

(Report prepared by Ian Ford, Committee Services Manager and Lisa Hastings, 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 Procedure Rules, Articles of the Constitution, Overview and Scrutiny Procedure Rules, the Property Dealing Procedure and the Procurement Procedure Rules 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.

In addition, there are proposals relating to matters including the size of Committees (following a review previously requested by Full Council), start times for meetings of the Council and various Committees, consideration of motions at Full Council meetings, training for members of an overview and scrutiny committee, moving to a "paperless" working environment, and a protocol for the live webcasting of meetings.

##### **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 (with Councillors Fowler and Placey as designated substitutes). The CRWP met on 19 November 2021, 17 December 2021, 14 January 2022 and 31 January 2022.

A summary of the proposed changes compared to the existing Parts of the Constitution is provided under each heading in the background 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** that:

(a) the Council's Constitution be amended to reflect the proposed changes as set out in Appendices A – K, & M attached hereto this report and that those changes come into effect on 27<sup>th</sup> April 2022 i.e. the day after the Annual Meeting of the Council;

(b) with effect from the Annual Meeting of the Council on 26 April 2022, the Committees

listed below be reduced in size as follows:-

**Audit = 5 Members (from 7 Members);**

**Human Resources & Council Tax = 7 Members (from 9 Members);**

**Licensing & Registration = 7 Members (from 9 Members); and**

**Planning Policy & Local Plan = 9 Members (from 11 Members).**

- (c) the Review of the Constitution Portfolio Holder Working Party be requested to carry out a fundamental review during 2022 of the way in which Motions to Council, submitted in accordance with Council Procedure Rule 12, are dealt with procedurally and that the results of that review be submitted to Full Council, via the Cabinet, in due course.
- (d) commencing with the newly elected Council in May 2023, Members of the Tendring District Council will operate in a “paperless” environment e.g. by providing agendas/reports etc. to Members by electronic means only and to cease entirely the provision of printed (and posted) copies of such documents.
- (e) in the meantime Members of the Tendring District Council continue to be encouraged to give their consent for the Council and Committee Agendas to be transmitted (i.e. sent) in electronic form to a particular electronic address rather than by a paper copy through the post.
- (f) in relation to Council Procedure Rule 33.3 (Training Members of the Audit, Licensing and Registration, Planning and Standards Committees), the Monitoring Officer be authorised to define what is meant by the word “mandatory” and to also decide whether the training offered/provided is/was sufficient and “fit for the purpose” to be contained within guidance and issued to members of those Committees accordingly.
- (g) the reduction in the number of formal scheduled meetings for the Council’s overview and scrutiny committees should be maximised to focus on the principles established in the Executive – Scrutiny Protocol and work of the Centre for Governance and Scrutiny over the next year, particularly with regard to the use of task and finish groups and researched and evidenced reviews on specific topics linked to the Council’s Corporate Plan.
- (h) the Protocol for the webcasting and public filming and recording of meetings of the Full Council, Cabinet and Committees, as set out in Appendix L, be approved and incorporated into Part 6 of the Constitution and that it comes into effect on 27th April 2022 i.e. the day after the Annual Meeting of the Council.
- (i) Council notes that the Monitoring Officer intends to exercise her delegated powers (as a result of management restructures and legislative requirements) and make appropriate amendments to the Constitution in relation to the following matters:-
- Article 12 (Officers);
  - Removal of those provisions within the Council’s Constitution that had been inserted in accordance with the (now defunct) “Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 [SI 2020/392]”;
  - The terms of reference and delegated powers of the Human Resources & Council Tax Committee and its Sub-Committee; and

- The list of Proper Officers within the Scheme of Delegation.

**2. That Cabinet resolves that:**

- (a) the definition of a Key Decision, as contained in Article 13.03 of the Council's Constitution, be reviewed as part of the annual review of the Council's Treasury Strategy;
- (b) the Councillor Development Portfolio Holder Working Party be requested to consider and report back to Cabinet whether, in the light of the Centre for Governance & Scrutiny's recommendation, members of this Council's overview and scrutiny committee(s) should receive mandatory training; and
- (c) the Deputy Chief Executive & Monitoring Officer be requested to produce and submit to the Leader of the Council, for his consideration, terms of reference and a scheme of delegation for a Road Naming Portfolio Holder Working Party.

**REASON(S) FOR THE RECOMMENDATION(S)**

Having considered the outcome of the annual review of the Constitution carried out by the Review of the Constitution Portfolio Holder Working Party and the Portfolio Holder's recommendations arising therefrom, and in order to enable those recommendations to be submitted to the Full Council for approval and adoption.

**ALTERNATIVE OPTIONS CONSIDERED**

- (1) Not to approve some or all of the Portfolio Holder's recommendations;
- (2) To amend or substitute some or all of the Portfolio Holder's recommendations.

**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 from May 2023 is consistent with the Council's Policy of its operations becoming carbon neutral by 2030.

**OUTCOME OF CONSULTATION AND ENGAGEMENT**

The outcome of the annual review of the Constitution by the Review of the Constitution Portfolio Holder Working Party is reported elsewhere in this report. During the review members of the working Party consulted, as appropriate, the members of their respective political groups. In addition, political group leaders and their deputies were invited to attend the Working Party's meeting held on 14 January 2022 in order to provide their direct input on certain aspects of the review.

**LEGAL REQUIREMENTS (including legislation & constitutional powers)**

Is the recommendation a Key Decision	YES/NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000
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(see the criteria stated here)			<b>expenditure/income</b> <input type="checkbox"/> Is otherwise significant for the service budget
		<b>And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)</b>	Not Applicable in this instance
<b>X</b>	<b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b>		
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>			
<b>FINANCE AND OTHER RESOURCE IMPLICATIONS</b>			
<b>Risk</b>  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.			
<b>X</b>	<b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b>		
The Section 151 Officer provided feedback on some of the proposed amendments through the review.			
<b>USE OF RESOURCES AND VALUE FOR MONEY</b>			
The following are submitted in respect of the indicated use of resources and value for money indicators:			
A) Financial sustainability: how the body plans and manages its resources to ensure	N/A		

it can continue to deliver its services;	
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	N/A
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	N/A
<b>MILESTONES AND DELIVERY</b>	
<p>Annual review of the Constitution carried out by the Review of the Constitution Portfolio Holder Working Party – November 2021 to January 2022.</p> <p>Submission of Corporate Finance &amp; Governance Portfolio Holder’s recommendations to formal Cabinet meeting – 25 February 2022.</p> <p>Submission of Cabinet’s recommendations to Full Council for approval and adoption – 29 March 2022.</p> <p>Implementation of approved changes to the Constitution – 27 April 2022.</p>	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
Not implementing the amendments to the Constitution will negatively impact the Council’s governance arrangements.	
<b>EQUALITY IMPLICATIONS</b>	
<p>The purpose of the Constitution is to:</p> <ol style="list-style-type: none"> <li>1 Provide key elements of the Council’s overall governance arrangements;</li> <li>2 Enable decisions to be taken efficiently and effectively;</li> <li>3 Create an effective means of holding decision-makers to public account;</li> <li>4 Enable the Council to provide clear leadership to the community, working in partnership with the local community, businesses and other organisations for the long term well-being of the District;</li> <li>5 Support the involvement of the local community in the process of local authority decision making;</li> <li>6 Ensure that no one will review, or scrutinise, a decision in which they were directly involved;</li> <li>7 Help Councillors represent their residents more effectively;</li> <li>8 Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for their decisions; and</li> <li>9 Provide the framework and structure in which cost effective quality services to the community are delivered.</li> </ol>	
<b>SOCIAL VALUE CONSIDERATIONS</b>	
None	
<b>IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030</b>	
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 from May 2023 is consistent with the Council’s Policy of its operations becoming carbon neutral by 2030.	

<b>OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS</b>	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
<b>Crime and Disorder</b>	None
<b>Health Inequalities</b>	None
<b>Area or Ward affected</b>	None directly.

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

#### **BACKGROUND**

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 4.28):**

In addition to a number of amendments removing the provisions for remote meetings:-

Rule 1 (xiii) – Business for the Annual Meeting of the Council

Remove the requirement to consider the work programme for the overview and scrutiny committees, which are now agreed later in the municipal year.

Rule 16 – Rules of Debate (Amendments to 16.5 (Amendments to Motions); 16.8 (Right of Reply); and 16.10 (Closure Motions)

In order that the Secunder of a Motion is the penultimate Member to speak under the Rules of Debate.

In addition, any amendment proposed to be made to a motion that may have budgetary implications must have been submitted to the Council's Section 151 Officer at least two working days before the Full Council meeting to enable them to consider the implications for the Council's finances.

Furthermore, no amendment will be accepted that could bind or fetter the Executive or a Committee in relation to matters that are within the responsibility of the Executive or a Committee of the Council.

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

**(b) Council Procedure Rules – Section 2 (Committees)(Part 4.29 to 4.34):**

In addition to a number of amendments removing the provisions for remote meetings:-

Rule 33.2 – Eligibility of the Planning Policy & Local Plan Committee

Restriction on membership not to overlap the Planning Committee to be removed due to Section 2 of the Council's Local Plan now being adopted.

### Rule 33.3 – Training Requirements

Additional wording inserted to allow the Monitoring Officer to provide further guidance on the meaning of ‘mandatory’ and ‘fit for purpose’ for the various training sessions delivered to the different committees.

### Rule 36 – Attendance at Meetings

To include a formal right for the Chairman of the Planning Committee to attend and to speak, on behalf of the Planning Committee, on Report items that were to be considered by the Planning Policy & Local Plan Committee.

The current Chairman of the Planning Policy & Local Plan Committee (Councillor Turner) has, as a matter of courtesy and practice, extended a standing invitation to the Chairman of the Planning Committee to attend and to express that Committee’s views and comments on the Report items that are being considered by the Planning Policy & Local Plan Committee.

To also make clear that the Council’s Statutory Officers and Chief Executive, have the right to attend any Committee meeting to address the Committee on an item of business, in accordance with their overarching obligations and duties.

During its meeting held on 14 January 2022 the CRWP was informed and duly noted that certain wording within this Rule is at odds with the wording and intention of Council Procedure Rule 12.6 (Referred Motions – Right of Mover to Attend Meeting). Whilst the CRWP did not record a firm decision at that time it would nevertheless be advantageous to make an amendment to Rule 36 at this time in order that Rule 36 and Rule 12.6 no longer contradict each other.

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

#### **(c) Article 7.08 (Cabinet Procedure Rule 1.2)**

Amendments removing the provisions relating to remote meetings, and to make reference to the Council’s written formal Protocol for filming and recording meetings of the Full Council, Cabinet and Committees (including the platform used for streaming).

In order also to make clear that the Council’s Statutory Officers and Chief Executive, have the right to attend any Committee meeting to address the Committee on an item of business, in accordance with their overarching obligations and duties.

*Proposed changes to Article 7 are shown in **RED** in **Appendix C**.*

#### **(d) Article 3 (Citizens and the Council)**

In order to remove reference to remote meetings and a member of the public’s right to attend such a meeting and to include reference to the Housing Ombudsman in the complaints section.

*Proposed changes to Article 7 are shown in **RED** in **Appendix D**.*

**(e) Delegated Powers – Powers Delegated to the Chief Executive (Part 3.8 & 3.9 and 3.45)**

In order to:-

- (1) include an additional delegated power to the Chief Executive whereby he would have the power to authorise compensation payments (up to a proposed maximum of £5,000) as a result of recommendations made by the Local Government & Social Care Ombudsman, or by the Housing Ombudsman, or by virtue of the Council's Corporate Complaints Procedure. This amendment would be included as a new Number 11 on Part 3.9 (Green pages) under the Responsibility for Non-Executive Functions (Full Council) section in Schedule 2 in Part 3 of the Constitution; and
- (2) to amend some of the Chief Executive's delegated powers in relation to Electoral matters (in particular, in relation to designations of polling districts and polling places) and to also delete references to European Parliamentary elections.

The reasoning behind these suggested changes include:-

- (1) to formally include within the Council's Constitution, in the interests of transparency and openness, a power that the Chief Executive has previously exercised; and
- (2) to correct discrepancies, clarify the Chief Executive's powers and to also reflect the fact that the UK is no longer part of the EU.

*The proposed changes to Delegated Powers are shown in **RED** in **Appendix E**.*

**(f) Terms of Reference of the Audit Committee**

In order to clarify which external inspection reports that Committee should receive.

*The proposed changes to the terms of reference of the Audit Committee are shown in **RED** in **Appendix F**.*

**(g) Property Dealing Procedure (Part 5): (Part 5.62 to 5.64)**

In order to amend the Property Dealing Procedure (specifically, the table in Appendix A (Levels of Decision Making) [Part 5.63 in the Cream pages]) in order to more properly reflect the decision making process required for operational purposes.

The aforementioned table currently indicates that only the Portfolio Holder with responsibility for Assets makes decisions on the listed "rights and interests". However, the Portfolio Holder for Housing should also be making such decisions where they relate to the Housing Revenue Account and therefore it would be appropriate to amend the Appendix to reflect this.

*Proposed changes to the Property Dealing Procedure are shown in **RED** in **Appendix G**.*

**(h) Procurement Procedure Rules (Part 5): (Part 5.76)**

In order to include an operational change requested by the Council's Chief Financial Officer whereby, under Procurement Procedure Rule 4.3.8, the process of accepting the tender when only one Tender was received would include the relevant Portfolio Holder together with the Portfolio Holder for Corporate Finance and Governance.



*The proposed changes to the Procurement Procedure Rules are shown in **RED** in **Appendix H**.*

**(i) Article 13 – Decision Making (Part 2): (Part 2.51 to 2.52)**

In order to make it clear that the Chief Executive, Chief Financial Officer (Section 151 Officer) and Monitoring Officer have the right to attend, speak on an item of business, provide representations and present a report to discharge their statutory and constitutional duties whenever necessary. In such instances, the Committee or Sub-Committee in question will give due regard of the relevant advice provided. The decision and minutes of the meeting will record the advice, how it was taken into account and reasons for any departure.

*The proposed changes to Article 13 are shown in **RED** in **Appendix I**.*

**(j) Article 6 – Overview and Scrutiny Function (Part 2): (Part 2.14 to 2.16)**

Article 6.02 (Terms of Reference) - In order to reflect that the number of meetings of the overview and scrutiny committees will be reduced.

*The proposed changes to Article 6 are shown in **RED** in **Appendix J**.*

**(k) Overview and Scrutiny Procedure Rules (Part 5)**

Rule 4 (Meetings of the Committees) – In order to reflect that the number of meetings of the overview and scrutiny committees will be reduced.

Rule 15 (Members and Officers Giving Account) - In order to make it clear that the Chief Executive, Chief Financial Officer (Section 151 Officer) and Monitoring Officer have the right to attend, speak on an item of business, provide representations and present a report to discharge their statutory and constitutional duties whenever necessary. In such instances, the Committee or Sub-Committee in question will give due regard of the relevant advice provided. The decision and minutes of the meeting will record the advice, how it was taken into account and reasons for any departure.

*The proposed changes to the Overview & Scrutiny Procedure Rules are shown in **RED** in **Appendix K**.*

**OTHER MATTERS CONSIDERED:**

**1. Reduction in the size of membership of Committees**

On 22 January 2019 Full Council approved the current Committee structure and their sizes of membership which then came into effect with the new 48 member Council at the May 2019 Elections. This had followed a review by the CRWP, and subsequently the Cabinet. The current structure is as follows:-

- *Audit Committee = 7 Members*
- *Community Leadership O & S Committee = 9 Members*
- *Human Resources & Council Tax Committee = 9 Members*
- *Licensing & Registration Committee = 9 Members*
- *Planning Committee = 9 Members*

- *Planning Policy & Local Plan Committee = 11 Members*
- *Resources and Services O & S Committee = 9 Members*
- *Standards Committee = 7 Members*
  
- *Miscellaneous Licensing Sub-Committee = 5 Members*
- *Premises/Personal Licences Sub-Committee = 3 Members*
- *Town & Parish Councils Standards Sub-Committee = 3 TDC Councillors (plus 3 Parish Councillors)*
  
- *Joint Committee – TCBGC (with CBC & ECC) = 3 TDC Councillors [this was formally established by Full Council on 30 November 2021]*

Furthermore, Full Council, at its meeting held on 16 March 2021 (Minute 104 refers), decided, inter alia, that: *“the Review of the Constitution Portfolio Holder Working Party be requested, as part of its next annual review of the Council’s Constitution, to revisit the committee structure of the Council”.*

Accordingly, the CRWP, at its meeting held on 19 November 2021 (Note 2 refers), considered how effectively this structure had operated in practice. Suggested areas to consider had included:-

- (i) The number of O & S Committees – TDC currently has 2. TDC has had 1, 3 and 4 O & S Committees at various times in the past. The Centre for Governance & Scrutiny (CfGS) has recommended that the Council look to make greater use of Task and Finish Groups to undertake scrutiny enquiries. This suggested therefore that fewer, if any enquiries, would be undertaken at formal Committee meetings. It was therefore opportune for the Council to look at the constitutional requirements for two OSCs and whether a single ‘commissioning’ OSC should be established that would then establish Task and Finish Groups for all enquiries and then receive the reports from those Groups.
  
- (ii) The establishment of an Appeals Committee – The Joint Negotiating Committee for Chief Executives of local authorities has written to Councils in England to request that they reviewed the structures required to manage model disciplinary procedures in accordance with the requirements set out in the Model Disciplinary Procedure and Guidance in the JNC Conditions of Service Handbook.

The CRWP had **AGREED**, inter alia, –

- (a) *“that, in principle, the Committees listed below be reduced in size as follows:-*

*Audit = 5 Members (from 7 Members);*

*Human Resources & Council Tax = 7 Members (from 9 Members);*

*Licensing & Registration = 7 Members (from 9 Members); and*

*Planning Policy & Local Plan = 9 Members (from 11 Members).*

- (b) *that the Head of Democratic Services & Elections submit, to a future meeting of the CRWP, proposals (including an amended Article 6 and amended Overview & Scrutiny Procedure Rules) for abolition of the Community Leadership O & S Committee and the Resources and Services O & S Committee and the establishment instead of a single ‘commissioning’ O & S Committee which would establish task and finish groups for all inquiries (which would be linked to the Council’s Corporate Plan) and then receive and consider the reports from those groups.*

(c) *that the CRWP notes that the Monitoring Officer, in the light of the receipt of the letter from The Joint Negotiating Committee for Chief Executives of local authorities, will be carrying out a fundamental review of the terms of reference of the Human Resources & Council Tax Committee.*”

## **2. Review of Procedure for Dealing with Motions to Council submitted Pursuant to Council Procedure Rule 12**

Full Council, at its meeting held on 21 July 2020, and following consideration by the CRWP and subsequently the Cabinet, had approved alterations to Council Procedure Rule 12 including that:-

*“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.”*

At its meeting held on 19 November 2021 (Note 3 refers) the CRWP considered how effectively those changes had operated in practice.

The CRWP had agreed that the Monitoring Officer be requested to submit to a future meeting of the CRWP for Members’ consideration an amended Council Procedure Rule 12 which will have been revised to reflect the changes put forward by Members at the meeting.

The CRWP subsequently considered the previously requested proposals at its meeting held on 14 January 2022 (Note 28 refers) and upon reflection had:-

*“AGREED, inter alia, that the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that the CRWP be requested to carry out a fundamental review of the way in which Motions to Council, submitted in accordance with Council Procedure Rule 12, are dealt with procedurally and that the results of that review be submitted to Full Council, via the Cabinet, in due course.”*

## **3. Meeting Times of Full Council and Committees**

At the request of its Chairman, the CRWP discussed the meeting times of meetings of the Full Council and its Committees (Note 6 – 19.11.21 refers). Full Council at its meeting held on 22 January 2019 had resolved, inter alia, to keep Council’s start time at 7.30 p.m. in order to help those Members who were in employment.

The current start times for Committees are as follows:-

### **Daytime Committees**

Audit Committee = 10.30 a.m.

Standards Committee = 10.00 a.m.

Miscellaneous Licensing Sub-Committee = 10.00 a.m.

Premises/Personal Licences Sub-Committee = 10.00 a.m.

Evening Committees (6.00 p.m. starts)

Planning Committee  
Planning Policy & Local Plan Committee

Evening Committees (7.30 p.m. starts)

Community Leadership O & S Committee  
Human Resources & Council Tax Committee  
Licensing & Registration Committee  
Resources and Services O & S Committee

The CRWP agreed that –

(a) *it supports, in principle, that with effect from the Annual Meeting of the Council following the 2023 District Council Elections, the start time for the following bodies be brought forward to 7.00 p.m. from 7.30 p.m.:-*

*Full Council  
Human Resources & Council Tax Committee  
Licensing & Registration Committee  
Overview & Scrutiny Committee(s)*

(b) *the Head of Democratic Services & Elections email all Members of the Council to canvass their views on the above proposal.*

Subsequently, at the CRWP's meeting held on 14 January 2022 (Note 29 refers), it was reported that 30 responses had been submitted to the Head of Democratic Services out of 48 Members of the Council. Of those 30, 14 had supported a start time of 7.00 p.m. and 13 had supported a start time of 7.30 p.m. The other three responses had either expressed no preference or had suggested a start time of either 7.00 p.m. or 6.30 p.m.

The CRWP therefore **AGREED** *“that the Corporate Finance & Governance Portfolio Holder be requested to recommend to Full Council (via the Cabinet) that, with effect from the Annual Meeting of the Council following the 2023 District Council Elections, the start time for the following bodies be brought forward to 7.00 p.m. from 7.30 p.m.:-*

*Full Council  
Human Resources & Council Tax Committee  
Licensing & Registration Committee  
Overview & Scrutiny Committee(s).”*

The Portfolio Holder for Corporate Finance and Governance notes the outcome of the survey of Members and that the results were very close and he has decided not to progress with recommending any changes to the start time to meetings.

**4. Members moving to being "Paperless" from the May 2023 District Council Elections**

At its meeting held on 19 November 2021 (Note 7 refers) the CRWP considered a proposal from the Chairman that, commencing with the newly elected Council in May 2023, Members would operate in a “paperless” environment e.g. providing agendas/reports etc. to Members by

electronic means only and to cease entirely the provision of printed (and posted) copies of such documents.

It was felt that this would help the Council in its aim of becoming “Carbon Neutral” and to also help save the Council money and resources.

The CRWP **AGREED** “*that -*

- (a) *the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that, commencing with the newly elected Council in May 2023, Members would operate in a “paperless” environment e.g. providing agendas/reports etc. to Members by electronic means only and to cease entirely the provision of printed (and posted) copies of such documents; and*
- (b) *in the meantime Members continue to be encouraged to give their consent for the Council and Committee Agendas to be transmitted (i.e. sent) in electronic form to a particular electronic address rather than by a paper copy through the post.”*

## **5. Key Decisions - Definition**

At its meeting held on 19 November 2021 (Note 8 refers) the CRWP reviewed the definition of a Key Decision. The Constitution (Article 13.03 – Decision Making: Key Decisions) defines a “Key Decision” as an executive decision that is likely to:-

*“result in the local authority incurring expenditure which is, or the making of savings which are in excess of, £100,000 or is significant having regard to the local authority’s budget for the service or function to which the decision relates; or*

*be significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.”*

The CRWP noted that the Monitoring Officer had consulted the Council’s Section 151 Officer who was of the opinion that the level should remain at £100,000 being proportionate to the level of the Council’s budget.

Consequently, the CRWP had **AGREED** “*that –*

- (a) *no change be recommended, at this time, in relation to the definition of a Key Decision; and*
- (b) *the CRWP recommends to Cabinet (via the Corporate Finance & Governance Portfolio Holder) that the definition of a Key Decision be reviewed as part of the annual review of the Council’s Treasury Strategy.”*

## **6. Live Streaming and Recording of Council, Cabinet and Committee Meetings etc.**

At its meeting held on 19 November 2021 (Note 9 refers) the CRWP considered how to reflect in the Council’s Constitution and operational procedures the Council’s continuing (post remote meetings) practice of live streaming and recording meetings of the Full Council, Cabinet and Committees etc. including such matters as:-

- (1) Should the principle that TDC will make an audio and/or audio-visual live stream and recording of meetings of the Full Council, Cabinet and Committees be formally confirmed and included within the Council Procedure Rules?

- (2) Should a time limit be set for how long after the meeting that TDC will make available such recordings?
- (3) Should TDC have a written formal Protocol for filming and recording meetings of the Full Council, Cabinet and Committees?

The CRWP agreed -

*(a) that, in principle, the CRWP supports –*

- (1) the formal confirmation that TDC will make an audio and/or audio-visual live stream and recording of meetings of the Full Council, Cabinet and Committees and that this be included within the Council Procedure Rules;*
- (2) the setting of a time limit of two years for how long after the meeting that TDC will make available such recordings; and*
- (3) the introduction of a written formal Protocol for filming and recording meetings of the Full Council, Cabinet and Committees (including the platform used for streaming).*

*(b) that the Monitoring Officer be requested to submit to a future meeting of the CRWP for Members' consideration a draft formal Protocol and an amended Council Procedure Rule 5 which will have been revised to reflect the above.*

Subsequently, the CRWP, at its meeting held on 31 January 2022 (Note 39 refers), considered a draft written formal Protocol for webcasting and public filming and recording of meetings of the Full Council, Cabinet and Committees (including the platform used for streaming) and amended Council Procedure Rules 5 and 35 and an Article 7.08 (Cabinet Procedure Rule 1.2) which had been revised to reflect the changes put forward by Members at their November meeting.

Following a detailed discussion of the proposed changes it was:-

**AGREED** that the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that:-

- (a) Council Procedure Rules 5 and 35 and an Article 7.08 (Cabinet Procedure Rule 1.2) be amended to incorporate the proposed changes set out in Document D.9; and*
- (b) the Protocol for webcasting and for public filming and recording of meetings, as amended, be formally adopted.*

## **7. Mandatory Training for Members of the Overview & Scrutiny Committees**

At its meeting held on 17 December 2021 (Note 16 refers) the CRWP noted that the Centre for Governance & Scrutiny (CfGS) had advocated that members of an Authority's overview and scrutiny committee(s) should receive mandatory training.

The CRWP was aware that Council Procedure Rule 33.3 stipulates, inter alia, that members of the Audit, Licensing & Registration, Planning and Standards Committees must receive mandatory training. Council Procedure Rules 34.4 and 34.3 stipulate that Group Leaders shall provide named substitute members for the above mentioned committees and that those substitute members shall also be trained.

Members discussed the following questions with the Monitoring Officer:

- (1) Should TDC's Overview & Scrutiny Committees be included within CPR 33.3 and therefore

- members of those committees will need mandatory training?
- (2) Should Group Leaders be required to submit a list of named substitutes for those committees and should they also be trained?
  - (3) Who decides that the mandatory training is sufficient and “fit for purpose”?

The CRWP **AGREED** “that –

- (a) *the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that the Monitoring Officer be authorised to define what is meant by the word “mandatory” and to also decide whether the training offered/provided is/was sufficient and “fit for the purpose” and that Council Procedure Rule 33.3 (Training Members of the Audit, Licensing and Registration, Planning and Standards Committees) be amended accordingly; and*
- (b) *no decision be made at this time regarding the issue of mandatory training for members of the overview and scrutiny committee(s) and that the Head of Democratic Services & Elections be requested to refer this matter to the Councillor Development Portfolio Holder Working Party for its comments.”*

## **8. Article 12 (Officers)**

At its meeting held on 17 December 2022 (Notes 18 and 19 refer) the CRWP noted that the Monitoring Officer proposed to use her delegated powers to update:-

- (i) Article 12.01 (Management Structure) – in order to reflect the Council’s current senior management structure as over the course of the last 12 months the Head of Paid Service (the Chief Executive) has made changes in relation to the Council’s Senior Management structure (the “Management Team”); and
- (ii) Article 12.03 (Functions of the Monitoring Officer: section (a) Ensuring lawfulness and fairness of decision making) - in order to make it clearer what the role of the Monitoring Officer is in cases of “unlawfulness” or “maladministration”.

## **9. Removal of Provisions within the Constitution relating to the emergency Covid-19 (Coronavirus) Regulations and Remote Meetings**

Full Council, at its meeting held on 15 September 2020, had approved amendments to the Council’s Constitution in order to reflect the consequences of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 [SI 2020/392]. This had involved changes to the following parts of the Constitution:-

Article 3 – Citizens and the Council [3.01 (c) and (d) (ii)];

Article 7 – The Cabinet / Executive [7.08 – 1.1];

Council Procedure Rules – Rules 1A, 5, 6A, 6B, 8A, 10A, 19A, 23A, 32 and 35.1;

Access to Information Procedure Rules – Rules 3A and 5A.

At its meeting held on 17 December 2021 (Note 20 refers) the CRWP noted that those amendments would be removed from the Council’s Constitution by the Monitoring Officer under her delegated powers given the fact that the aforementioned Regulations had lapsed on 7 May 2021 and there is, currently, no likelihood of their provisions for remote meetings being incorporated by Parliament into local government legislation.

## **10. Proposals for a Single "Commissioning" Overview & Scrutiny Committee and Implementation Date for that new Committee**

At its meeting held on 17 December 2021 (Note 21 refers) the CRWP considered proposals (including, inter alia, an amended Article 6 and amended Overview & Scrutiny Procedure Rules (O&SPRs) for the abolition of the Community Leadership Overview & Scrutiny Committee and the Resources and Services Overview & Scrutiny Committee and the establishment instead of a single but larger Overview & Scrutiny Committee. The proposal was that the single Overview and Scrutiny Committee would act as a commissioning body establishing task and finish enquiries (linked to the Council's Corporate Plan) and then receive and consider the reports arising from those enquiries.

The CRWP was informed that Article 6 had also been amended to enable the overview and scrutiny committee to include the scrutiny of the work of the TCBGC Joint Committee in its Work Programme.

The CRWP agreed *"that it –*

- (a) endorses, in principle, the abolition of the Community Leadership Overview & Scrutiny Committee and the Resources and Services Overview & Scrutiny Committee and the establishment instead of a single 'commissioning' Overview & Scrutiny Committee which would, inter alia, establish overview and scrutiny task and finish enquiries (which would be linked to the Council's Corporate Plan) and then receive and consider the reports arising from those enquiries; and*
- (b) endorses, in principle, that the change to a single Overview & Scrutiny Committee comes into effect from the Annual Meeting of the Council in April 2022 (i.e. for the 2022/23 Municipal Year).*
- (c) that the Committee Services Manager be requested to send to the members of the CRWP the draft new Article 6 and Overview & Scrutiny Procedure Rules in order to enable the CRWP Members to circulate those documents to the members of their respective political groups for consultation purposes."*

Subsequently, the CRWP at its meetings held on 14 January 2022 (Note 31 refers) and 31 January 2022 (Note 44 refers) received the feedback from political groups. Upon further debate and consideration the CRWP:-

**AGREED** that the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that:-

- (a) no change be made to the current two overview and scrutiny committees;*
- (b) the number of meetings of those committees be reduced and that Article 6 (Overview and Scrutiny Function) and Overview & Scrutiny Procedure Rule 4 (Meetings of the Committees) be amended accordingly to reflect this; and*
- (c) the reduction in the number of formal scheduled meetings for the Council's Overview and Scrutiny Committees should be maximised to focus on the principles established in the Executive – Scrutiny Protocol and the work of the Centre for Governance and Scrutiny over the next year, particularly with regard to the use of task and finish groups and researched and evidenced reviews on specific topics linked to the Council's Corporate Plan.*



## **11. Potential Establishment of a Road Naming Executive Committee**

At its meeting held on 14 January 2022 (Note 30 refers) the CRWP, at the request of the Leader of the Council (Councillor Stock OBE), considered the merits of establishing a Road Naming Committee or Working Party.

Members were aware that the naming of residential roads as a result of new housing developments is an executive function which, at Tendring District Council, is currently delegated to the Leisure and Tourism Portfolio Holder (Councillor Porter).

Therefore, if any such committee is to be established it would be a Cabinet Committee (with either decision making or advisory only powers). An alternative approach to be considered would be the setting up of a Portfolio Holder Working Party which would operate solely in an advisory capacity to the Portfolio Holder.

The CRWP **AGREED** that it requests the Corporate Finance & Governance Portfolio Holder to recommend to the Cabinet -

*“That the Deputy Chief Executive & Monitoring Officer (Lisa Hastings) be requested to produce and submit to the Leader of the Council, for his consideration, terms of reference and a scheme of delegation for a Road Naming Portfolio Holder Working Party.”*

## **12. Council Procedure Rule 3 – Ordinary Meeting (Minutes of Committees)**

A proposal was put to the CRWP that Minutes of meetings of Committees be no longer included on the Agenda for meetings of the Full Council. It was suggested that the current practice was felt to be a bit of an anachronism embedded in the ‘old style committee system’ practices of the 1970s to 1990s. Most Councils did not include Committee Minutes on their Full Council Agenda especially since the introduction of Local Government Act 2000 (and the Cabinet system of local government). The Minutes of the Licensing & Registration Committee (and its sub-committees) and the Planning Committee did not appear on this Authority’s Full Council Agenda.

In addition, Committee Minutes were only formally received and noted at Full Council. Any recommendations to Council from a Committee were submitted to Full Council via a separate Report. Members would still be able to submit Questions to Committee Chairmen under the provisions of Council Procedure Rule 11.2.

The CRWP discussed this proposal at its meetings held:-

- 19 November 2021 (Note 5):

**AGREED** that the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that Minutes of meetings of Committees be no longer included on the Agenda for meetings of the Full Council and that Council Procedure Rule 3 (Ordinary Meeting) be amended accordingly.

- 17 December 2021 (Note 23):

*Further to Note 5 (19.11.21) the CRWP considered the proposed amended Council Procedure Rule 3 which had been revised to reflect the changes put forward by Members at their November meeting.*

*The wording of the proposed amended CPR 3 was attached as Document D.10 to the Agenda with suggested deletions and/or additional text highlighted in purple.*

**AGREED** that the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that Minutes of meetings of Committees be no longer included on the Agenda for meetings of the Full Council and that Council Procedure Rule 3 (Ordinary Meeting) be amended accordingly.

- 31 January 2022 (Note 45) and finally:-

**AGREED** that the CRWP recommends to the Corporate Finance & Governance Portfolio Holder that no change be made at this time and that Minutes of meetings of Committees continue to be included on the Agenda for meetings of the Full Council.

Following the agreements within the Working Party at its meetings held in November and December 2021, the Portfolio Holder has decided to proceed with the previous recommendations to recommend to Full Council (via the Cabinet) that Minutes of meetings of Committees be no longer included on the Agenda for meetings of the Full Council and that Council Procedure Rule 3 (Ordinary Meeting) be amended accordingly.

### **13. Review of the Terms of Reference of the Human Resources & Council Tax Committee**

At its meeting held on 31 January 2022 (Note 36 refers) the CRWP received the verbal update of the Monitoring Officer's review of the terms of reference of the Human Resources & Council Tax Committee and its Sub-Committee in the light of the receipt of the letter from The Joint Negotiating Committee for Chief Executives of local authorities.

The CRWP noted that the Monitoring Officer proposed to use her delegated powers to update this section of the Constitution in order to reflect current legislative regulations relating to the procedures for disciplinary and dismissal matters affecting the Council's statutory and senior officers.

The Monitoring Officer, in consultation with the Assistant Director (Partnerships), as appropriate, would also look at the relevant Human Resources policies and the model procedures for an Appeals Committee for the dismissal of the statutory officers. All committee members would receive dedicated training and professional guidance, support and advice before any employment decisions were made regarding the Statutory Officers.

### **14. Review of the Duties and Rights of the Fourth "Stand-By Member" at Meetings of the Premises/Personal Licences Sub-Committee**

At its meeting held on 31 January 2022 (Note 42 refers) the CRWP considered the outcome of the review of the duties and rights of the fourth "stand-by" Member at meetings of the Premises/Personal Licences Sub-Committee (Council Procedure Rule 36 – Attendance at Meetings), as requested by the Working Party.

Upon a review carried out by Officers it was recommended by them that no change be made to the duties and rights of the fourth "stand-by" Member at meetings of the Premises/Personal Licences Sub-Committee. In the interests of probity, the avoidance of the perception of "undue influence" and to avoid giving grounds for a legal challenge it was considered important that the decision was debated and made only by the three Members of the Sub-Committee sitting in closed session accompanied solely by the Council's solicitor (who would be there solely to

give legal advice).

Following a discussion of the proposed changes it was:-

**AGREED** that the CRWP recommends to the Corporate Finance & Governance Portfolio Holder that no change be made to Council Procedure Rule 36 – Attendance at Meetings at this time.

#### **15. Review of the Procedures relating to Statutory Officers Attending and Speaking at Committee Etc. Meetings**

At its meeting held on 31 January 2022 (Note 43 refers) the CRWP considered the suggestion of the Monitoring Officer that the Council's Statutory Officers and Chief Executive, (when acting in addition to the role as Head of Paid Service) should have the right to attend any Committee meeting to address the Committee on an item of business, in accordance with their overarching obligations and duties.

The suggested additional wording was set out in red in Document D.18, as attached to the Agenda, and followed the principles of transparency in decision making (Article 13), the members' Code of Conduct (paragraph 3.7 – decision making) and Article 12 (Functions of Statutory Officers).

The CRWP noted that the Monitoring Officer would be using her delegated powers to "tidy up" the list of Proper Officers in the Scheme of Delegation.

Following a detailed discussion of the proposed changes it was:-

**AGREED** that the CRWP -

- (a) requests the Corporate Finance & Governance Portfolio Holder to recommend to Full Council (via the Cabinet) that Article 7 (the Executive), Article 13 (the Decision Making), Overview & Scrutiny Procedure Rule 15 (Members and Officers Giving Account) and Council Procedure Rule 36 (Attendance at Meetings) be amended to incorporate the proposed changes set out in Document D.18; and
- (b) notes that the Monitoring Officer will be using her delegated powers to "tidy up" the list of Proper Officers in the Scheme of Delegation.

#### **16. Review of the Effectiveness and Intent of Article 2.06 (Attendance)**

The CRWP, at its meeting held on 31 January 2022 (Note 41 refers) considered the recommendation of the Monitoring Officer that the wording of Article 2.06 be either amended to be consistent with the legislative position for the six month rule or removed from the Constitution.

Upon a review of the effectiveness and intent of Article 2.06 (Attendance) it was considered by the Monitoring Officer that it was not a governance requirement that the Constitution should cover. There were many reasons why an elected Member may not be able to attend a Committee for which they are a member for 4 months.

The text of the proposed amended Article 2.06 (Document D.15) was attached to the Agenda.

Following a detailed discussion of the proposed changes it was:-

**“AGREED** that the CRWP recommends to the Corporate Finance & Governance Portfolio Holder that no change be made to Article 2.06 (Attendance) at this time.”

The Portfolio Holder has considered the feedback from the CRWP and the advice of the Monitoring Officer and for the reasons that the wording of Article 2.06 is not consistent with the legislative position and it is not a governance requirement to report non-attendance for 4 months, he will recommend to Cabinet, for further recommendation to Council that the wording is removed.

The proposed changes to Article 2 of the Constitution are shown in **RED** in **Appendix M**.

#### **PREVIOUS RELEVANT DECISIONS**

Full Council at its meeting held on 22 January 2019 had resolved, inter alia, to keep Council’s start time at 7.30 p.m. in order to help those Members who were in employment.

Full Council, at its meeting held on 21 July 2020, and following consideration by the CRWP and subsequently the Cabinet, had approved alterations to Council Procedure Rule 12.

Full Council, at its meeting held on 16 March 2021 (Minute 104 refers), decided, inter alia, that:

*“the Review of the Constitution Portfolio Holder Working Party be requested, as part of its next annual review of the Council’s Constitution, to revisit the committee structure of the Council”.*

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

Notes of the meetings of the Review of the Constitution Portfolio Holder Working Party held on 19 November 2021, 17 December 2021, 14 January 2022 and 31 January 2022.

#### **APPENDICES**

##### **A.Z**

<b>APPENDIX A</b>	<b>Part 4</b>	<b><u>Amended Council Procedure Rules – Section One</u></b>
<b>APPENDIX B</b>	<b>Part 4</b>	<b><u>Amended Council Procedure Rules – Section Two</u></b>
<b>APPENDIX C</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 7 (Executive)</b>
<b>APPENDIX D</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 3 (Citizens and the Council)</b>
<b>APPENDIX E</b>	<b>Part 3</b>	<b>Delegated Powers (Chief Executive)</b>
<b>APPENDIX F</b>	<b>Part 3</b>	<b>Delegated Powers (Audit Committee)</b>
<b>APPENDIX G</b>	<b>Part 5</b>	<b>Property Dealing Procedure – Amendment</b>
<b>APPENDIX H</b>	<b>Part 5</b>	<b>Procurement Procedure Rules – Amendment</b>
<b>APPENDIX I</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 13 (Decision Making)</b>
<b>APPENDIX J</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 6 (Overview and Scrutiny Function)</b>
<b>APPENDIX K</b>	<b>Part 5</b>	<b>Overview and Scrutiny Procedure Rules - Amendments</b>
<b>APPENDIX L</b>		<b>Protocol for Webcasting and for Public Filming and Recording of meetings of the Full Council, Cabinet and Committees</b>
<b>APPENDIX M</b>	<b>Part 2</b>	<b>Articles of the Constitution – Article 2 (Members of the Council)</b>

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