

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

## CABINET

10 NOVEMBER 2017

### JOINT REPORT OF THE LEADER OF THE COUNCIL AND FINANCE & CORPORATE RESOURCES PORTFOLIO HOLDER

#### **A.10 AMENDMENTS TO THE COUNCIL'S CONSTITUTION – FINANCIAL & PROCUREMENT MATTERS**

(Report prepared by Lisa Hastings, Monitoring Officer)

#### **PART 1 – KEY INFORMATION**

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

This report asks Cabinet to approve a delegation to the Portfolio Holder for Finance and Corporate Resources and recommend to Council, proposed changes which have been suggested by the Monitoring and Section 151 Officers as part of an annual review of the Constitution.

The main proposals cover a number of miscellaneous amendments to Financial and Procurement matters to reflect changes required to comply with legislation and to ensure the Constitution is both effective and efficient at an operational level.

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

##### **EXECUTIVE SUMMARY**

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.

The previous Constitution Working Party undertook a substantial review of the Constitution in 2014 however; the Monitoring Officer is under a continuing obligation to review the content and can make minor amendments under Article 15, as agreed by Council in June 2014. If the Monitoring Officer considers that any additional changes are required these proposals are reported to Cabinet, who in turn make recommendations to Council.

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

The main proposed changes relate to the Financial and Procurement Procedure Rules and a delegation to the Portfolio Holder for Finance and Corporate Resources in consultation with the Chief Finance Officer to agree the outturn position each year, providing the necessary flexibility to enable the production and publication of the Council's Statement of Accounts, which must now be prepared and published one month earlier from next year. This delegation does not interfere with the statutory requirement to produce the final

accounts to the Audit Committee.

## RECOMMENDATION

**That Cabinet:**

- (a) Agrees the Portfolio Holder for Finance and Corporate Resources be authorised, in consultation with the Chief Finance Officer, to agree the outturn position / report each year to provide the necessary flexibility to comply with the new statutory timetable for publishing the Council's Statement of Accounts;**
- (b) approves that the Scheme of Delegation – Schedule 3 - Responsibility for Executive Functions Part 3.41 of the Constitution be amended to include the specific delegation; and**
- (c) recommends to Council that the Council's Constitution be amended to reflect the proposed changes to the Financial and Procurement Procedure Rules as set out in this report.**

## 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 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 consider 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.

The Leader of the Council is responsible for approving the delegation of executive functions (Constitution Reference: Article 7 – Part 2.14 and Part 3.32 – Schedule 3 Responsibility of Executive Functions).

Local Audit and Accountability Act 2014 and the Account and Audit Regulations 2015 bring forward the timetable for preparation and approval of accounts. For 2017/18, the deadline for the Section 151 Officer to prepare and sign draft financial statements (i.e. closedown the Council's accounts) is moving to 31 May (currently 30 June). The deadline for the approval and publication of financial statements with an audit opinion is moving to 31 July (currently 30 September).

These amendments to the timetable do not affect the statutory requirement for the approval of the final statement of accounts, which must be undertaken by the Council's Audit Committee, albeit the meeting will have to re-arranged for July in 2018.

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.

#### **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.**

There are no other implications arising from this report.

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

#### **CURRENT POSITION**

##### **(a) Outturn Reporting**

Each year the outturn report is presented to Cabinet in June for approval along with associated adjustments such as transfers to reserves, carry forwards and the funding of the capital programme.

However from 2018/19 the Statement of Accounts, which are 'built' on the approved outturn position have to be published, prior to audit, by the end of May, a full month earlier than has previously been the case. However, when reflecting on the time required to actually closedown the accounts and prepare the associated outturn report, it is unlikely that this will be possible within the usual Cabinet meeting cycle. Therefore a pragmatic / alternative solution is required to provide the necessary flexibility around which the necessary work can be completed.

It is therefore proposed to delegate approval of the outturn position each year to the Finance and Corporate Resources Portfolio Holder. The item will remain in the forward plan and subject to call-in, as would ordinarily be the case, but it would enable a more timely decision making process to support the new Statement of Accounts timetable.

Any further decisions that may be required following the outturn process, such as allocating money brought forward from the prior year will be reported to Cabinet at a subsequent meeting, so in effect the outturn report delegated to the Finance and Resources Portfolio Holder will primarily only place available funding that needs further allocation in reserves until such time as a formal / separate decision is presented to Cabinet.

Part 5.41 Para 8 of the Constitution will also need to be amended to reflect this change.

##### **(b) Part 5 – Financial Procedure Rules**

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

i. Rule 6.3.4 – the conditions for a virement are:

Part 5.38 Table (c) **General Fund Revenue and HRA (excluding employees)** – suggested amendment is to remove the text “*excluding employees*” from the heading, because employee costs do form part of these funds and should not be treated differently under any of the other circumstances.

Part 5.39 Table (f) **Between Capital and Revenue** – suggested amendment is to remove text under virement value so that it reads “*(i) Increase in an approved Capital budget*”. In the opinion of the Chief Finance Officer, the additional wording “*which is to be financed by a virement, from an existing revenue budget*” is not relevant and should be deleted. The approval section of the table sets out the two circumstances ‘when’ this increase can occur and the approval process.

ii. Rule 10.7 – the authority to write off debts is delegated by the Council as follows:

Part 5.48 First table - “*Debt due to the Council where the amount owing is a Council Tax or NNDR debt*”, should be extended to include “*Housing Benefit and Rents*” so that these debts are treated consistently. Reference to ‘*housing benefit*’ should be deleted from paragraph 3. The Authority to Write Off should remain delegated to a Corporate Director, but reflect that the recovery of debts is split across different services and therefore, the text should state “*the relevant Corporate Director*”.

Part 5.48 Second Table – amend the reference from “*Specific Debts*” to “*Specific Debtors*”. In criteria (b) replace “*Bailiffs*” with “*Recovery Enforcement Agents*” and insert at the end “*insufficient assets to satisfy the debt*”. Currently bailiffs have to seek enforcement from the same debtor multiple times for different debts, at an additional cost to the Council whereby it is evident from the first or second visit, they had insufficient funds.

Part 5.49 Second Table – increase the level so that the Chief Financial Officer can authorise the write off of individual debts not exceeding £5,000 (current level is £2,500). The actions are still recorded as Officer Decisions.

iii. Rule 13 – Banking Arrangements:

Part 5.53 - Remove Rule 13.2.3 as the Council no longer draws cheques.

iv. Rule 16 – Funding Arrangements:

Part 5.55 - Amend Rule 16.3, so that applications for external funding are approved by Management Team following consultation with the Chief Financial Officer, this is to reflect that approval should be sought to ensure external funding applied for is in accordance with the Council’s priorities and not an additional impact on resources. Such approval will be recorded with an Officer Decision.

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

- i. Section 4.2.2 – Procurement over £10,000, but not expected to exceed £50,000:  
Part 5.67 – replace the current wording at (v) with *“unless an exemption is obtained from the Head of Finance, Revenues and Benefits or the Head of Governance and Legal Services, the Council Standard Contract for Services must be used when seeking quotations. When seeking an exemption, the relevant department will identify why any additional or replacement terms and conditions are necessary for the service being sought”*. This is to ensure that there is a consistency of terms and conditions being entered into across the Council, providing value for money and fairness.
- ii. Section 4.3.5 – Going out to Tender – General Rules:  
Part 5.69 - replace the current wording at (x) with *“unless an exemption is obtained from the Head of Finance, Revenues and Benefits or the Head of Governance and Legal Services, the Council’s Standard Contract for Services must be used. The draft contract must be supplied as part of the tender exercise. When seeking an exemption, the relevant department will identify why an alternative model contract is required or any additional or replacement terms and conditions are necessary for the service being sought”*. This is to ensure that the Council fulfils its requirements under the Public Contract Regulations 2015; there is a consistency of terms and conditions being entered into across the Council; achieving value for money and fairness.
- iii. Section 4.3.7 – Opening of Tenders:  
Part 5.70 – remove the requirement for an elected member to be present at the time tenders are opened. Since the Council has been using electronic tendering, the system has a number of security measures in place with access to the electronic tender box only being supplied upon the deadline being reached after being supplied with a passcode. The process, undertaken by either the Committee Services Manager or Officer in connection with IT, is witnessed by a Procurement Officer and representative of the service area. It is suggested that it is not an effective use of the Portfolio Holders time to require their attendance to view an email and this could be delegated to the Corporate Director or Head of Service.
- iv. Section 4.3.9 - Tender Evaluation Panel:  
Part 5.71 & 5.72 – amend reference from a *“Panel”* to *“Consultation”*, as it is not always necessary and convenient to convene a Panel, when consultation can be undertaken electronically between the relevant officers. The relevant Corporate Director will nominate the Head of Service to lead on the consultation and record the decision to award as a formal Officers Decision. The decision will take into account those matters identified by the consultees.
- v. Section 5.1 – Contract clauses:  
Part 5.72 – it is suggested that this section is replaced with reference to the contractual guidance issued by the Monitoring Officer, the Council’s standard draft contract being used unless an exemption has been sought and enforcing the legislative requirement to send draft contracts with the tender documentation. This will ensure that the guidance and draft documentation is kept up to date and is amended to reflect legislation changes, best practice and operational matters.

## **BACKGROUND PAPERS**

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

from this report.

## **APPENDICES**

**A.1 – Appendix A: Part 5 – tracked changes to Financial and Procurement Procedure Rules**