
Subject:	REVIEW OF THE CONSTITUTION 2019/20
Meeting and Date:	GOVERNANCE COMMITTEE – 25 JUNE 2020 COUNCIL – 22 JULY 2020
Report of:	MONITORING OFFICER
Classification:	UNRESTRICTED

Purpose of the report: Article 15 of the Constitution requires the Monitoring Officer to conduct regular reviews of the Constitution.

Article 15, paragraph 15.02(a) requires that amendments to the Constitution will only be approved by Council (or its committees) after consideration of the proposal by the Governance Committee.

Article 15, paragraph 15.02 (d) enables proposed changes to the Constitution relating to the amendment of the title of an officer to be approved by the Monitoring Officer.

Part 3, Section 6, Sub section A Paragraph 12 of the Constitution allows for the Scheme of Officer Delegations (Part 3, Section 6) to be amended from time to time by the Council.

Recommendation:

Governance Committee: That it be recommended to Council that the proposed changes in the Review of the Constitution 2019/20, as set out in Appendix 1, and specifically those changes relating to Part 3, Responsibility for Functions, Section 1 (Responsibility for Local Choice Functions), Section 2 (Responsibility for Council Functions) and Section 6, Sub Section C (Scheme of Officer Delegations) that relate to Council functions be approved and incorporated into the Council's Constitution, issue no. 23.

Council: That the proposed changes in the Review of the Constitution 2019/20, as set out in Appendix 1, and specifically those changes relating to Part 3, Responsibility for Functions, Section 1 (Responsibility for Local Choice Functions), Section 2 (Responsibility for Council Functions) and Section 6, Sub Section C (Scheme of Officer Delegations) that relate to Council functions be approved and incorporated into the Council's Constitution, issue no. 23.

(Note: The Leader of the Council will be asked separately to approve any changes relating to executive functions, but the Council is asked to approve the Scheme of Officer Delegations in its totality in the event that there has been an erroneous misclassification of functions.)

1. Summary

1.1 Article 15 of the Council's Constitution makes provision for the regular review of the Constitution by the Monitoring Officer on an annual and ad-hoc basis. This 2019/20 review incorporates a number of changes to the Scheme of Officer Delegations (Part 3, Section 6, Sub Section C), changes arising from the decision in July 2019 to create a single overview and scrutiny committee model and general administrative amendments.

2. Introduction and Background

2.1 Since the introduction of the first version of the Constitution in 2002, the Council has revised the Constitution twenty-one times. The Review of the Constitution 2019/20, which has been undertaken by the Monitoring Officer in conjunction with the Head of Governance and the Democratic Services Manager will be the twenty-second revision resulting in the proposed draft version 23.

2.2 Due to the size of the Council's Constitution, it is not practical to conduct a detailed analysis of nearly 500 pages on an annual basis and instead specific areas are selected each year for review. This year's review has concerned itself with:

- (a) incorporating changes previously agreed by the full Council (such as the single scrutiny committee and amendments to the Members' Allowances Scheme);
- (b) reflecting structural changes to the Council's organisational structure;
- (c) reflecting legislative changes in the Scheme of Officer Delegations;
- (d) the collation of changes made by decision-making bodies such as the Cabinet or Council during the course of the previous year; and
- (e) general administrative amendments.

2.3 It should be noted that the Leader of the Council will be asked separately to approve any changes to the Scheme of Officer Delegations relating to the powers of the executive as the Council is not legally able to do this. Notwithstanding this, the Council is asked to approve the Scheme of Officer Delegations in its' entirety (including those delegations relating to executive functions). This is because the classification of functions between executive and non-executive functions is not entirely straightforward and we now know from decided legal cases that if a delegation is approved by the wrong body it is likely to be of no legal effect. If the entire Scheme of Officer Delegations is approved by both the Council and the executive Leader, the Council should be better placed to answer any legal challenge that the individual delegations have not been properly approved.

Approval of Amendments to the Constitution

2.4 An explanation of the key changes is set out below:

(a) Textual Amendments

2.5 There were a small number of amendments made to correct references to the standards committee that should now refer to the governance committee. Similarly, a small number of changes have been made to correct references to 'democratic support' to read 'democratic services' and references to 45 councillors have been changed to 32 councillors to reflect the new council size.

(b) Changes previously agreed by Cabinet or Council

Single Scrutiny Model

2.6 The full Council at its meeting held in July 2019 agreed to adopt a single scrutiny committee model. As part of this a number of changes to the Constitution were agreed and these are incorporated into version 23 for the first time.

Members' Allowances Scheme

- 2.7 The full Council also agreed to amend its Members' Allowances Scheme in January 2020. These changes are incorporated into the Constitution in Part 6.

Corporate Plan Objectives

- 2.8 The changes to paragraph 1.03(b) in Article 1 of the Constitution are updates following the adoption of a new Corporate Plan by the full Council in February 2020.

Prescribed Standing Orders – Dismissal of Statutory Officers

- 2.9 The Council adopted a revision to its prescribed standing orders in October 2017 in accordance with the requirements of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. Although these were agreed by the full Council they have not until now been incorporated into the Constitution and the proposed changes address this omission. In order to operate the prescribed standing orders effectively, it will be necessary to make further changes to the Constitution and this will be picked up as part of the next review.

Social Media Policy for Members

- 2.10 The Council previously adopted a social media policy for elected members and a copy of this was provided to all Members of the Council as part of their induction following the elections in May 2020. This is now incorporated in Part 5 (Codes and Protocols) of the Constitution.

(c) Changes to the Executive arising from the May 2019 elections

- 2.11 Following the elections in May 2019, there were a number of changes made to the number of composition and size of the Cabinet. These were further amended upon Councillor T J Bartlett being appointed Leader of the Council in October 2019. These changes are now incorporated into Section 3 (Responsibility for Executive Functions) of Part 3 (Responsibility for Functions) of the Constitution.
- 2.12 Following the reduction in the number of Cabinet Members in May 2019 from 8 members to 7 members, consultation was undertaken with the Leader of the Council in respect of the current quorum for meetings of the Cabinet. It is therefore proposed to reduce the quorum from the current 4 members of the Cabinet to a quorum of 3 members. This is in line with the quorum for the ordinary committees of the Council.

(d) Scheme of Officer Delegations

- 2.13 There are a number of changes proposed to the Section 6 (Scheme of Officer Delegations) of Part 3 (Responsibility for Functions) to reflect legislative changes, current procedures or to provide increased transparency or clarity. For example, the threshold for referring an application to the planning committee previously stated "more than 5" and this has been changed to read "6 or more" for clarity. These changes are all relatively minor and do not represent any significant extensions to functions being exercised by officers as opposed to by members.
- 2.14 In addition, in the opportunity has been taken to make arrangements for the Strategic Director (Corporate Resources) and the Strategic Director (Operations and Commercial) to exercise extensive functions relating to the councils housing stock in contemplation of the return of the housing functions from East Kent Housing. The effect of these changes is broadly to allow officers of the council to discharge those functions currently being discharged on behalf of the Council by East Kent Housing.

Coronavirus Act 2020

- 2.15 A number of amendments have been made to the scheme of delegations to reflect the wide range of powers granted under the Coronavirus Act 2020. The delegations affect the following officers: Chief Executive; Strategic Directors; Head of Governance; Solicitor to the Council; Head of Regulatory Services; Public Protection Manager;

Environmental Protection Manager; Licensing Team Leader and Head of Community & Digital Services. It is important that the Council has the delegations in place to utilise these powers as the local economy emerges from lockdown. It is important that the Council has the delegations in place to utilise these powers as the local economy emerges from lockdown. It should be emphasised that these powers, in practice, will only be used by officers as part of their normal roles. In the event that something more radical was to be put in place under the Act, e.g. powers to impose local lockdowns, then this would be brought back into the democratic process for decision.

- 2.16 The Leader of the Council recognising the importance of officers being able to exercise these powers as soon as practicably possible, has already remade the Scheme of Executive Delegations to Officers.

(e) Other Changes

Member Training

- 2.17 In May 2018, the Council reviewed the frequency of its training arrangements for elected Members and introduced an annual training requirement as part of the review. However, after two years of operation it is difficult to demonstrate what value this change has added and there is no provision to invalidate previous training if the annual refresher training is not undertaken.
- 2.18 It is therefore proposed that this annual training requirement, as set out in the appendix to Article 13 of the Constitution, be removed and the Constitution revert to the previous arrangements to provide for a requirement that all Members undergo training following the ordinary elections of the Council every four years, where required to reflect legislative/policy changes, where issues in the performance of a committee are identified or where changes to a committees membership occur.

Committee Membership

- 2.19 Following the changes to the committee structure in July 2019, officers identified a need to provide for a more streamlined process for changes to the size of committees. The amendments set out in Sections 1 (Responsibility for Local Choice Functions) and 2 (Responsibility for Council Functions) of Part 3 (Responsibility for Functions) of the Constitution provide for this through the insertion of the words “[or other number to be agreed by Council]” after the current committee size listed.
- 2.20 This provision is absent from joint committees/forum as the membership of these bodies are set by separate arrangements.

Council Procedure Rules - Voting on Budget Arrangements

- 2.21 The Monitoring Officer is of the view that the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 for a recorded vote on budget arrangements applies to amendments moved and not just the substantive decision. This position was taken at the budget setting meeting held on 26 February 2020 and is consistent with the view taken by many other authorities. The change to Council Procedure Rule 18.6 gives effect to this position.

Council Procedure Rules – Withdrawal from Meetings Procedure Rules

- 2.22 These were previously agreed by the Council for inclusion within the Constitution and are set out in Annex 1 to the Council Procedure Rules. The procedures set out in Annex 1 do not include any changes to the current procedures in use.

Overview and Scrutiny Procedure Rules – Public Petitions

- 2.23 As part of reviewing the arrangements for overview and scrutiny following the adoption of a single scrutiny committee it was noticed that the old rules for public petitions were still set out in paragraph 22 of the Overview and Scrutiny Procedure Rules. As these

are in places inconsistent with the currently adopted arrangements for petitions (based on the statutory guidance of the time of their adoption) it is proposed to delete paragraph 12. The current rules for public petitions are set out in Appendix 4 of the Overview and Scrutiny Procedure Rules.

- 2.24 It is noted by officers that the current public petition rules have not been reviewed since adoption and that the statutory guidance that underpinned them has since been repealed by section 46 of the Localism Act. It is therefore proposed by officers to undertake a review of the current public petition arrangements in 2020 with a view to developing a simpler public petition scheme in line with a number of other authorities following the repeal of the statutory guidance.

Overview and Scrutiny Procedure Rules – Appendix 3 Public Speaking

- 2.25 The recent introduction of remote meetings has demonstrated a need to increase the flexibility of the public speaking arrangements in line with the provision made for the Chairman of the Planning Committee. It is therefore proposed that paragraph 9 of the Planning Committee public speaking arrangements be replicated in the Overview and Scrutiny Committee public speaking arrangements so as to allow the Chairman to alter the procedure in exceptional circumstances.

3. Identification of Options

- 3.1 Option 1: To approve the 2019/20 Review of the Constitution as submitted.
- 3.2 Option 2: To not approve the 2019/20 Review of the Constitution as submitted.
- 3.3 Option 3: To amend the Constitution in some other way.

4. Evaluation of Options

- 4.1 Option 1 is the preferred option as it enables the efficient operation of the authority to continue.
- 4.2 Option 2 is not the preferred option as it will significantly impede the day-to-day operation of the authority as the Constitution will no longer be able to operate as a definitive reference for officers.
- 4.3 Option 3 is not recommended as it will not be possible for the Governance Committee or the Council to make any significant changes to the proposals at their meeting. Should members be minded to pursue this option they would need to instruct the Monitoring Officer as to their wishes and require him to submit a report to future meetings of the Governance Committee and the Council.

5. Resource Implications

- 5.1 There are no resource implications arising from the Review of the Constitution.

6. Climate Change and Environmental Implications

- 6.1 There are no climate change and environmental implications arising from the Review of the Constitution. Due to the size of the Constitution document Members are encouraged to use an electronic copy of the document rather than printing a paper copy.

7. Corporate Implications

- 7.1 Comment from the Section 151 Officer: The Head of Finance and Housing has been consulted on this report and has no further comments to add.
- 7.2 Comment from the Head of Governance: The Head of Governance has been consulted during the preparation of this report and has no further comment to make

7.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

8. **Appendices**

Appendix 1 – Constitution of the Council (Issue 23 Draft)

9. **Background Papers**

Local Government Act 2000 and the regulations made under that Act.

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