
Subject:	REVIEW OF THE CONSTITUTION 2021/22
Meeting and Date:	GOVERNANCE COMMITTEE – 2 DECEMBER 2021 COUNCIL – 26 JANUARY 2022
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 2021/22, 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. 24.

Council: That the proposed changes in the Review of the Constitution 2021/22, 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. 24.

(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 2021/22 review incorporates a number of changes to the Scheme of Officer Delegations (Part 3, Section 6, Sub Section C), in particular in relation to the Port Health function and the separation of Public Protection and Environmental Protection, 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 2021/22, which has been undertaken by the Monitoring Officer in conjunction with the Head of Governance & HR and the Democratic & Corporate Services Manager will be the twenty-second revision resulting in the proposed draft version 24.

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 are a small number of amendments reflecting changes in job titles and organisational structure as well as general housekeeping amendments.

(b) Changes previously agreed by Cabinet or Council

Members' Allowances Scheme

2.6 The full Council made its latest Members' Allowances Scheme in January 2021. These changes are incorporated into the Constitution in Part 6.

(c) Changes to the composition of the Executive

2.7 Following the Annual Meeting of the Council in May 2021, there were a number of changes made to the composition of Cabinet Portfolios. These changes are now incorporated into Section 3 (Responsibility for Executive Functions) of Part 3 (Responsibility for Functions) of the Constitution.

(d) Scheme of Officer Delegations

- 2.8 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. A significant amount of work has been undertaken in respect of the correct allocation of functions in respect of Port Health and Public Protection and the residual and/or shared functions that remain with Regulatory Services.

Review of the Constitution 2022/23

- 2.9 There are several areas of work that will not be completed in time for inclusion in this year's review that will be included in the 2022/23 review. This includes the updated broadcasting of meeting arrangements and the revised petition scheme, which will be brought forward in the first half of 2022.

3. Identification of Options

- 3.1 Option 1: To approve the 2021/22 Review of the Constitution as submitted.
- 3.2 Option 2: To not approve the 2021/22 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. Appendices

Appendix 1 – Constitution of the Council (Issue 24 Draft)

8. Background Papers

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

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