
| | |
|--------------------------|---|
| Subject: | REVIEW OF THE CONSTITUTION 2022/23 |
| Meeting and Date: | GOVERNANCE COMMITTEE – 27 FEBRUARY 2023 COUNCIL – 1 MARCH 2023 |
| 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 2022/23, 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. 25.

Council: That the proposed changes in the Review of the Constitution 2022/23, 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. 25.

(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 2022/23 review incorporates a number of changes to the Scheme of Officer Delegations (Part 3, Section 6, Sub Section C), in particular as a relation to services that have been moved between directorates following the appointment of a third Strategic Director in October 2022 as well as 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 2022/23, which has been undertaken by the Monitoring Officer in conjunction with the Strategic Director (Corporate and Regulatory) 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 updated Contract Procedure Rules and amendments to the Members' Allowances Scheme);
- (b) the Council's Petition Scheme;
- (c) reflecting structural changes to the Council's organisational structure;
- (d) reflecting legislative changes in the Scheme of Officer Delegations;
- (e) the collation of changes made by decision-making bodies such as the Cabinet or Council during the course of the previous year; and
- (f) 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.

Amendments to the Constitution Requiring Approval

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.

2.6 Additionally, referencing between the Access to Information Procedure Rules and the Protocol for Relationships between Members and Officers has been strengthened to ensure the link between the two sections is referenced clearly at the appropriate points.

(b) Petition Scheme

2.7 The Council's petition scheme was introduced in 2010 and has been revised following a review of its operation. The details of this review are contained in a report that Members have been asked to consider separately.

- 2.8 In summary, the review has streamlined the petition scheme and removed several elements that were introduced as part of the original, now repealed, statutory guidance. The intention of this was to produce a clearer, more user-friendly version of the current scheme while preserving the ability of local residents to exercise their rights to petition the Council on matters of local concern.

(c) Joint Health, Welfare and Safety Consultative Forum and Joint Staff Consultative Forum

- 2.9 The operation of the Joint Health, Welfare and Safety Consultative Forum over the last year has highlighted a deficiency in respect of the making of recommendations on operational matters to Corporate Management Team. The functions of the Forum are currently drafted as follows:

“The functions and objects of the Joint Forum shall be to consider all matters relating to the health, safety and welfare of all personnel employed by Dover District Council and to submit to the Council or Cabinet advice and recommendations thereon.”

- 2.10 In practice, matters of operational concern are more effectively addressed and resolved by the Corporate Management Team and officers have previously agreed to feed information back to relevant senior managers following meetings of the Forum. This is in keeping with the role of the Corporate Management Team in operational matters which is explicitly acknowledged in the decision-making powers of the Forum where it states:

“All decisions of the Joint Forum, other than matters of procedure, are subject to confirmation by the Council in relation to matter of policy, and by Corporate Management Team in relation to operational matters;”

- 2.11 This Review has sought to formalise a solution for situations where there has been a need to make recommendations to senior management (either collectively or individually) concerning operational matters of concern to the Forum through a small amendment to expand its functions to read:

“The functions and objects of the Joint Forum shall be to consider all matters relating to the health, safety and welfare of all personnel employed by Dover District Council and to submit to the Council or Cabinet, **or to the Corporate Management Team in respect of operational matters**, advice and recommendations thereon.”

- 2.12 The proposed changes do not remove any of the existing options open to the Forum and instead increases its range of options by formalising the function to make direct recommendation on operational matters to Corporate Management Team.

(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, organisational changes, current procedures or to provide increased transparency or clarity.

Changes previously agreed by Cabinet or Council

(a) Members' Allowances Scheme

- 2.14 The full Council made its latest Members' Allowances Scheme on 25 January 2023. These changes are incorporated into the Constitution in Part 6.

(b) Contract Procedure Rules

- 2.15 The updated Contract Procedure Rules were approved by the full Council on 25 January 2023. These Changes are incorporated into the Constitution in Part 5.

(c) Parental Leave Policy for Councillors

- 2.16 The Council at its meeting held on 20 July 2021 adopted the Parental Leave Policy for Councillors. This has now been incorporated into the Constitution and will form part of the induction material for councillors following the May 2023 elections.

3. Identification of Options

- 3.1 Option 1: To approve the 2022/23 Review of the Constitution as submitted.
3.2 Option 2: To not approve the 2022/23 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 25 Draft)

8. Background Papers

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

Contact Officer: Rebecca Brough, Democratic and Corporate Services Manager,
democraticservices@dover.gov.uk