
Subject:	REVIEW OF THE CONSTITUTION 2013
Meeting and Date:	Governance Committee – 19 November 2013 Council – 27 November 2013
Report of:	Director of Governance & Monitoring Officer
Classification:	UNRESTRICTED

Purpose of the report: Article 15 of the Constitution requires that the Constitution should be monitored and reviewed to ensure that the aims and principles of the Constitution are given full effect.

Recommendation: That Governance Committee recommend to Council that the Review of the Constitution 2013 be approved (including those in Part 3 in their entirety (Responsibility for Functions) and the proposed changes be incorporated into the Council's Constitution.

1. Summary

- 1.1 Article 15 of the Council's Constitution makes provision for the review of the Constitution on an annual basis and also on an ad-hoc basis. This review forms part of the annual review process and incorporates a number of changes reflecting legislative and organisational change. No fundamental changes are proposed to the way in which the governance of the Council operates.

2. Introduction and Background

- 2.1 Since the introduction of the first version of the Constitution in 2002, the Council has revised the Constitution sixteen times. The current version of the Constitution is issue 17. The Review of the Constitution 2013, which has been undertaken by the Monitoring Officer in conjunction with the Solicitor to the Council and supported by Democratic Support, has produced a draft issue 18.

- 2.2 The Council's Constitution runs to nearly 500 pages. Owing to its size resources do not admit of it being practical to conduct a detailed analysis of each page on an annual basis. Specific areas are therefore selected each year for review. This year's review has concerned itself with changes arising from to legislation, the Council's organisational structure and the collation of changes already made by decision-making bodies such as the Cabinet or Council during the course of the previous year.

- 2.3 The key focus of this year's annual review is as follows:

- Articles of the Constitution
- Part 3 Responsibility for Functions – incorporating amendments required as a consequence of legislative and organisational change)
- Part 4 – Council Procedure Rules
- Part 5 – Codes and Protocols (Arrangements for speaking at Planning Committee)

- 2.4 The changes to the Constitution come in three types – changes requiring Executive approval, changes delegated to the Monitoring Officer to approve and changes requiring Council approval.
- 2.5 A summary of the key changes is set out below.

Articles of the Constitution

- 2.6 The Constitution contains 16 Articles that set out how the Council operates and is governed in broad detail.

Article	Summary of Changes
1	The corporate aims and objectives have been updated to reflect those set out in the Corporate Plan.
2	<p>The section on member conduct has been brought into line with the provisions of the new Code of Conduct.</p> <p>Job descriptions - amendment to:</p> <ul style="list-style-type: none"> • Overview and Scrutiny Chairman to reflect new responsibilities in respect of Access to Information; • Standards Committee Chairman to reflect Localism Act and new Code of Conduct changes; and • Leader of the Council / Cabinet Member to reflect strong Leader model.
3	Amendments to bring the article in line with the Council's Petition Scheme.
4	Amendments to be consistent with judicial interpretation of what is meant by a plan or strategy (Buck v Doncaster)
6	Amendments to reflect repeal duty to conduct Best Value Reviews.
7	<p>Amendments to reflect Localism Act 2011 changes to Code of Conduct and strong Leader model.</p> <p>Deletion of Strategic Management Team in line with Council decision of 3 October 2012.</p>
8	Tidying up of regulatory committees to reflect actual situation.
9	The article has been amended to reflect the new Code of Conduct.
10	Amendments to reflect that Neighbourhood Forums are no longer a pilot scheme.
12	Amendments to reflect changes to management structure and changes to the Monitoring Officer's functions arising from Localism Act 2011 and new Code of Conduct.

13	Amendments to reflect changes to arrangements for Member training.
16	Changes to the publication arrangements for the Constitution.

Council Procedure Rules

- 2.7 The Council Procedure Rules have been the subject to incremental changes over a number of years and the objective of reviewing the Rules was to ensure that the rules were still fit for purpose and where appropriate to make presentational changes to improve clarity.

Public Speaking at Planning Committee

- 2.8 The Chairman of the Planning Committee has been exercising his discretion to permit public speaking for a second time in instances where an item has been deferred for consideration at a future meeting. The proposed amendments to this section regularise this situation by codifying the right to speak for a second time in the case of deferred items.

Part 3 – Responsibility for Functions -Officer Delegations

- 2.9 The Council's organisational structure has undergone a number of changes in the last year and this had required amendments to the officer delegations in Part Three. Where these changes are as a result of changes in officer job titles the Monitoring Officer has delegated authority to make these changes to the Constitution and these are presented to Members for note.
- 2.10 The attention of Members is drawn to the delegations of the Director of Finance, Housing and Community which have been the subject of a presentational revision. The purpose of this change is to make it clearer as to the nature of the delegations granted to the Director and the limits on them. It is intended that this model of presentation will be the template for all other areas of delegation as part of the 2014 Review of the Constitution.
- 2.11 The law requires that the Leader of the Council must make any changes relating to the delegation of executive functions. The Council may only make changes to the delegation of those functions which are non-executive. Great care has been taken to ensure that Part 3 correctly identifies which are executive functions and which are non-executive functions and generally the law is reasonably clear on where responsibility for different functions lies. However, at the margins the distinction can become blurred. In view of this potential difficulty it is the practice of Dover District Council for both the Council and the Leader to be asked to approve the entire schedule of delegations to officers. This practice is adopted to minimise the risk of challenge that the delegations have not been approved by the correct decision maker.

Members' Allowances

- 2.12 A separate report will be made to the Governance Committee and Council in January 2014 on the subject of the Quadrennial Review of Members Allowances.

Presentation and Printing of the Revised Constitution

- 2.13 The revised Constitution is not appended to this report due to the size of the document and is instead made available on the Council's website. The cost of printing and posting a each copy of the Constitution is estimated as being in excess of £17 and multiplied by 45 members has a significant cost implication. As an alternative to appending a paper copy to the agenda, an annotated draft version of the Constitution can be found on the Council's website under the page for the Governance Committee agenda for the meeting to be held on 19 November 2013 (<http://moderngov.dover.gov.uk/documents/s7050/Appendix%201%20-%20DRAFT%20CONSTITUTION%20-%20Issue%2018.pdf>). This clearly identifies the proposed changes. A printed copy of the Constitution is available on request by any member of the Council.
- 2.14 Members are requested to consult the online version of the draft Constitution in advance of the meetings of the Governance Committee and the Council. The Monitoring Officer will project a display of an electronic version of the Constitution at the meeting when he will present to Members on the key changes.
- 2.15 The Monitoring Officer has drawn up a work programme for the 2014 Review of the Constitution based on areas that it is expected will need revision as follows:
- Access to Information
 - Finance Procedure Rules / Budget Policy Framework
 - Delegations (Reviewing in respect of organisational and legislative change and ensuring uniformity of presentation)
 - Planning Protocol (to align with new Code of Conduct)

3. Identification of Options

- 3.1 Option 1 – To approve the Review of the Constitution and note the proposed work programme for 2014.
- 3.2 Option 2 – To not approve the Review of the Constitution.

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.

5. Resource Implications

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

6. Appendices

Appendix 1 – Draft Constitution of the Council (Version 18)

7. Background Papers

Localism Act 2011

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