

FOR PUBLICATION

COUNCIL CONSTITUTION REVIEW: **COUNCIL STANDING ORDERS** **CONTRACT PROCEDURE RULES** **AND OTHER UPDATES**

MEETING: COUNCIL

DATE: 17 DECEMBER, 2014

REPORT BY: LOCAL GOVERNMENT AND REGULATORY LAW
MANAGER - MONITORING OFFICER

WARD: ALL

KEY DECISION
REFERENCE (IF
APPLICABLE):

FOR PUBLICATION

BACKGROUND PAPERS FOR PUBLIC REPORTS:

TITLE: Constitution LOCATION: Council website

1.0 **PURPOSE OF REPORT**

- 1.1 To inform members of the work of the Constitution Working Group.
- 1.2 To recommend to the Council certain changes to the constitution arising from the ongoing Constitution review and changes at the Council.

2.0 **RECOMMENDATIONS**

- 2.1 That the amended Council Standing Orders be adopted.
- 2.2 That the Constitution Working Group reviews the operation of the amended Standing Orders after 12 months of operation.

- 2.3 That the new Contract Procedure Rules be adopted.
- 2.4 That further amendments to the Contract Procedure Rules be made as necessary to take account of forthcoming changes in the law.
- 2.5 That, in future, proposed amendments to the constitution be approved by Standards and Audit Committee, unless appropriate, or required by law, to be approved by full Council (or Leader or Cabinet).
- 2.6 That appropriate amendments be made to the Constitution to formally reflect the senior management restructure and consequent delegations to Service Managers.
- 2.7 That any necessary consequential changes be made to other parts of the Constitution as a result of the above amendments.

3.0 **BACKGROUND**

- 3.1 A member/officer working group, called the Constitution Working Group, has been systematically reviewing the Council's Constitution, finding ways to simplify and update it.
- 3.2 This work has been in addition to routine updates to the Constitution made as a result of legislation and other approved changes.
- 3.3 This report was considered by Cabinet at its meeting on 2 December, 2014 and it was resolved that the recommendations be supported and submitted to Full Council for approval (Cabinet Minute No. 130, 2014/15).

4.0 **THE CONSTITUTION AND THE REVIEW**

- 4.1 The Council's Constitution was adopted in the early 2000s and is based on a national model widely adopted at the time by authorities up and down the country.
- 4.2 Since adoption it has been updated and added to. Its structure has become cumbersome and it is difficult to navigate. Changes to procedures have been incorporated into the document without a review.
- 4.3 The decision making structure had not been reviewed, with delegations still relying heavily on member decisions.
- 4.4 The Constitution Working Group (CWG) began its work in 2012 and is regularly attended by Councillors Graham King (Executive Member for Governance and Organisational Development), Julie Lowe and Jean Innes, and Gerard Rogers (Local Government and Regulatory Law Manager - Deputy Monitoring Officer, now Monitoring Officer) and Sandra Essex (Democratic Services and Elections Manager).

- 4.5 The Group has met regularly, working closely with the text of the Constitution, simplifying it and putting it into Plain English, inviting other members and officers to its meetings as appropriate.
- 4.6 One of CWG's first tasks was to ensure that the authoritative and up to date version of the Constitution was on the Intranet and Website and that outdated printed versions were no longer relied on or in circulation. Changes are now clearly identified in a Summary of Updates.
- 4.7 CWG has systematically worked through all parts of the Constitution making draft changes and reviewing other alterations as they were approved by the Council (e.g. new Scrutiny Rules, new Members' Code of Conduct), looking for models of best practice elsewhere.
- 4.8 Rather than bringing the whole revised Constitution to members the proposal is to bring the changes in stages, starting with two parts of Part 4 of the current Constitution:
- Council Standing Orders - to help the efficiency of Council meetings and
 - Contract Procedure Rules - which need updating in accordance with current best practice

This report looks at these changes and recommends amended documents (changes to other parts of the Constitution may also follow as a consequence of these changes).

5.0 **COUNCIL STANDING ORDERS**

- 5.1 The Standing Orders have been reviewed and updated with a view to making business at Council meetings be transacted more efficiently and assist with the management of the meeting. The opportunity has also been taken to clarify other standing orders. There is a note on the changes and clarifications at **Appendix 1** and the new Standing Orders are at **Appendix 2**.
- 5.2 The purpose of the changes are summarised as follows:
- There would be a 3 hour time limit on full Council meetings. This could be waived if approved by the meeting.
 - There would be a 30 minute session where cross-portfolio questions could be asked of the Executive Leader (without notice and without relating to items in the minutes)
 - Generally opportunities for members to ask questions elsewhere on the agenda items and records of decisions/minutes would be regulated so that each member could only ask one question on each minute

- Reply to a question will be given by a member before taking the next question
- Debate on Notices of Motion will be limited to 60 minutes
- Generally no one shall speak on any motion for longer than 5 minutes (currently 10 minutes) unless allowed to do so under SO 22(e). This would not apply to the mover of the annual budget motion and the Leaders of the Minority Groups responding.
- The Mayor can ask for amendments to a notice of motion to be in writing and signed before it is debated

5.3 The three political groups have been consulted on the proposed changes and responses are as follows, with comment in italics:

- Restricting to one question:
 - sometimes a member will wish to ask a supplementary question or a question with several parts
 - what would prevent different members asking such other questions on the same item?
 - Restricts the democratic right to question, for some the ability to question is the only chance they have to be heard or question decisions

Comment: *It would be possible to amend to allow a follow up or supplementary question. However, the proposal is to prevent individual members from asking a long list of detailed questions which takes up valuable Council meeting time which potentially restricts other members' chance to ask questions. Sometimes detailed questions asked could be more effectively put to members or officers outside the Council meeting. The introduction of a Leader's 30 minute question time also gives members the opportunity to be heard and question decisions.*

- Time limits on time allowed for debate, or length of meeting could encourage filibustering

Comment: *There is currently no issue about filibustering at the meetings and no reason to assume it would happen in future. The Council meetings rarely exceed 3 hours and proper agenda planning can help ensure this with adequate time allowed on the agenda if there are complex or controversial matters for discussion.*

- One group felt that there should be no limit to 3 hours – It should be stated that members will be endeavour to get the business done within 3 hours but that business should continue until concluded.

Comment: *in terms of procedural formality and certainty, a limit with power to agree an extension gives more control. Setting a normal time limit with a power of extension will encourage members to be concise in their questions and answers.*

- When there are time limits on how long a member may speak, will the clock stop while they are interrupted by other member(s).

Comment: *It is for the Mayor as chair of the meeting to stop interruptions to members who are speaking.*

- Would the public be able to question the Leader?

Comment: *this is not currently proposed. Council procedures do already allow questions by the public (SO 10) at a specific place in the agenda.*

- Leader's 30 minute question time could be taken up with responses by the Leader, or questions from the Leader's own political group

Comment: *The Mayor, as chair, is apolitical and would neutrally select questions from all sides of the chamber and not only from the controlling group.*

- Only one petition per meeting: should this apply when there are two petitions, one in favour and one against an issue?

Comment: *The SO relates to petitions with more than 1000 signatures. One option could be to make an exception for more than one petition on the same issue (if both have more than 1000 signatures) but supporting a different outcome, however the purpose of the change is for effective management of time at the meeting.*

Presentation and discussion of a petition does use a considerable amount of a Council meeting and if there was more than one petition this would take proportionately longer. In practice, the risk of more than one petition coming forward to one Council meeting is minor and the agenda could be effectively managed to accommodate if it did occur (or a separate meeting held), so it is proposed that the one petition rule is withdrawn.

- Greater management of the meeting would be required by the Mayor

Comment: *the Mayor effectively manages the meeting, with advice from the Chief Executive. The agenda is carefully planned to ensure time is used effectively and this practice will continue.*

- Limit on speaking on a notice of motion limited to 5 minutes. Groups differed as to whether or not 5 minutes speaking was sufficient

Comment: *it is considered that 5 minutes allows sufficient time for arguments to be articulated*

- There was general support for streamlining procedures for Full Council meetings.

Comment: *noted.*

- New rules relating to notices of motion and amendments:
 - Restricting to one notice of motion each meeting: this rule could be used to prevent an important notice of motion coming forward (another notice of motion could be submitted before the important one was submitted)
 - The ability of the Mayor to require a written amendment could restrict members' ability to make amendments freely as they arise from debate on the motion

Comment: *The requirement is proposed so that there is certainty over what members are debating, especially where there are complex amendments. In practical terms it is unlikely that the rule would be used to prevent notices of motion going on the agenda.*

- 5.4 In conclusion, it is considered that the proposed changes to standing orders are in accordance with best practice examples at other authorities and to clarify existing rules. Members will want to consider the proposed changes and the above comments. Agendas will continue to be planned properly so that business can be completed within allotted time and Mayors as chair will be given necessary training and support to ensure they act fairly and neutrally.
- 5.5 On the issue of limiting members to one question it is suggested that that the member asking the question be permitted a follow up or supplementary question, and the recommendation to members for adoption of the amended standing orders in this report is made on that basis.
- 5.6 The amended Standing Orders will be monitored to assess their beneficial effect on the management of Council meetings
- 5.7 It is suggested that the Constitution Working Group reviews the operation of the amended Standing Orders after 12 months of operation.

6.0 **CONTRACT PROCEDURE RULES**

- 6.1 The current Contract Procedure Rules are no longer in accordance with best practice and need to be amended to take account of changes in the law and procurement procedures. Financial thresholds within the Contract Procedure Rules have not been reviewed for many years and need revising.
- 6.2 Revised Contract Procedure Rules are attached at **Appendix 3**.

The Government is shortly to make new regulations on procurement which will affect these rules further and they may need revisiting again soon. However it is better to progress the current changes at this stage.

- 6.3 We need to ensure the Contract Procedure Rules can be responsive to change so that they can be updated easily whenever necessary or appropriate. Delegation of some decisions on amendment to the Constitution is discussed elsewhere in this report (paragraph 8).

7.0 **DELEGATIONS TO EXECUTIVE DIRECTORS AND SERVICE MANAGERS**

- 7.1 Following the senior management restructure, under delegated powers, the Chief Executive made substitute delegations to relevant service managers in place of the delegations to Heads of Service.
- 7.2 The Constitution will also be updated generally to reflect the senior management restructure, and the delegations to Service Managers.
- 7.3 These delegations will be reviewed further by the Chief Executive once both Executive Directors are in post.

8.0 **PROCEDURES FOR AMENDMENT OF CONSTITUTION**

- 8.1 Traditionally all amendments to the constitution come to full council, either as formal reports or in the minutes of committees.
- 8.2 Many amendments to the constitution are appropriate decisions for full council. However, this means that the change process can be lengthy. There are some changes, which are less significant, needing to be made quickly which could usefully be made without a formal report to the whole Council. This would speed up the change process and enable the Constitution to be more responsive.
- 8.3 The Monitoring Officer updates the Constitution to reflect decisions made which have an impact on the drafting by changes in the law, or which have already been approved by members.
- 8.4 The law states that a local authority operating executive arrangements or alternative arrangements must prepare and keep up to date a constitution (Section 37(1) LGA 2000), but there is no requirement for the full council to approve the document or changes to it. However the approval of the document or changes to it cannot be an executive function, and must therefore be approved either by the full council or by a council committee (Section 48 (6) LGA 2000).
- 8.4 Changes to the scheme of delegation of executive functions however may only be made in accordance with s 15 LGA 2000 (scheme of delegation to be approved by full council, Leader or Cabinet) (see Cabinet Procedure

Rules) with a statutory default power (and express power) for the Leader to change this scheme of executive delegations in certain circumstances.

8.4 It is proposed that changes, other than changes required or appropriate to be approved by full council, Leader or Cabinet, should be made by Standards and Audit Committee after appropriate consultation. Routine amendments and updates should be made by the Monitoring Officer.

9.0 **NEXT STEPS**

9.1 A further report (or reports) will be shortly submitted for approval of amendments to other parts of the Constitution.

9.2 A report on the review of Part 3 Delegations will be submitted to members soon. There has been an acknowledgement that too many Council decisions are made by members and that modern local government needed faster decisions with officers enabled by the delegation scheme. CWG has looked at ways at increasing delegations and also at a new model which would empower officers, with members retaining strategic decision making.

10.0 **LEGAL ISSUES**

10.1 The Council is required by law to have a constitution. It must be in accordance with the law and the Council's agreed procedures. The Constitution must be reviewed and amended as necessary. It is important to have a responsive constitution that can be adapted fairly easily and appropriately to circumstances as they change.

11.0 **RISK MANAGEMENT**

Description of the Risk	Impact	Likelihood	Mitigating Action	Residual Risk
Constitution is not changed and becomes outdated, unlawful, and ineffective	High	High	Amend the constitution as appropriate and ensure that it is responsive to future needs for change	Low

12.0 **ALTERNATIVE OPTIONS TO BE CONSIDERED**

12.1 The changes recommended here reflect best practice, but it is for members to set the most appropriate way of conducting business at full Council meetings within a formal procedural framework.

12.2 The contract procedure rules need to comply with the law, though internal procedures can take account of local circumstances and practices.

13.0 **RECOMMENDATIONS**

13.1 That the amended Council Standing Orders be adopted.

13.2 That the Constitution Working Group reviews the operation of the amended Standing Orders after 12 months of operation.

13.3 That the new Contract Procedure Rules be adopted.

13.4 That further amendments to the Contract Procedure Rules be made as necessary to take account of forthcoming changes in the law.

13.5 That, in future, proposed amendments to the constitution be approved by Standards and Audit Committee, unless appropriate, or required by law, to be approved by full Council (or Leader or Cabinet).

13.6 That appropriate amendments be made to the Constitution to formally reflect the senior management restructure and consequent delegations to Service Managers.

13.7 That any necessary consequential changes be made to other parts of the Constitution as a result of the above amendments.

14.0 **REASON FOR RECOMMENDATIONS**

14.1 To ensure that the Council's constitution is amended in accordance with best practice and the law.

GERARD ROGERS
LOCAL GOVERNMENT AND REGULATORY LAW MANAGER
- MONITORING OFFICER