

## REVIEW OF CONSTITUTION

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**Wards affected:** None directly

### PROPOSED RECOMMENDATIONS TO COUNCIL:

That:

- (i) the proposed amendments to the Constitution including the officer delegation at Paragraph 30 be agreed; and
- (ii) the Officers be authorised to make the amendments.

#### Corporate Implications

1. Changes to the Constitution are made by Council, following recommendation from this Committee or Cabinet or another committee if appropriate. There are no financial implications arising from this report.
2. The Constitution was introduced with the coming into force of the Local Government Act 2000. There remains a legal requirement under Section 9P of the Act to prepare a Constitution and keep it up to date. As a minimum it must contain Standing Orders, the Code of Conduct under the Localism Act 2011, such information as the Secretary of State may direct, and such other information as the Council considers appropriate. As time has progressed, various ad hoc updates and amendments have been made, in keeping with the fact that the Constitution is comprised of an evolving set of documents which need to keep pace with legislative changes and requirements, the realities of the Council's processes, and good practice. It has however become apparent that a more thorough review of the Constitution is merited.
3. The proposed amendments arising from the review aim to bring the Constitution up-to-date, and make the document more accessible, clearer to understand, and user friendly.

#### Executive Summary

4. In March 2014, this Committee received a report setting out proposed amendments to the Scheme of Delegation to Officers, set out within Part 2 of the Constitution. It was noted at that time that it had been some time since a review of the Scheme had been undertaken. A number of new pieces of legislation, together with changes to officer job titles, and the transfer of certain functions from one Service area to another, had prompted a review to be undertaken.
5. In considering the proposals, the Committee agreed that the Scheme should be kept under review, with an annual review taking place to ensure any changes in

legislation or any other changes were included and accurately reflected.

6. In February 2015, a further report was presented to the Committee, which outlined further work that had been undertaken in relation to reviewing the layout of aspects of Part 2 of the Constitution (Responsibilities For Functions), including the Scheme of Delegation to Officers. No changes were made to delegations, responsibilities or functions, and the work undertaken at that time merely sought to improve the layout of the Constitution by bringing relevant Sections together. This comprised bringing together all officer delegations (other than those contained within Contract Standing Orders and Financial Regulations) together into one Part, for ease of reference, rather than the previous format of them being split over numerous Sections. Also presented in the report was a proposal to incorporate the Council's Petitions Scheme into Standing Orders (Part 3 of the Constitution).
7. The Committee supported the proposals contained within the report, and also emphasised the need to follow up this exercise by undertaking a full and detailed review of the Constitution after the May 2015 District Council Elections.
8. This report outlines the more detailed review that has taken place since then, and presents proposals to amend and update the Constitution.

## **Background**

### **Methodology of the Review**

9. In accordance with the decision to commence a detailed review of the Constitution following the 2015 District Council Election, officers met with the Leader of the Council and Chairman of the Regulatory and Appeals Committee to discuss the proposed review at the commencement of the process. It was agreed that all Parts of the Constitution should be reviewed, including inviting every Committee to review its own terms of reference. Each Head of Service was requested to review his/her delegations to ensure references to legislation and service delivery were up-to-date and accurate. All Members were also informed of the review, and invited to submit any comments or highlight any specific area within the Constitution. No submissions were received.
10. A project plan and proposed timeline were agreed with the Leader and the Chairman of the Regulatory and Appeals Committee. This provided for the review to be presented to this Committee in the early part of 2016. Members will recall that the meetings of the Committee scheduled for 2 February and 14 March were cancelled, with the new meeting date of 2 March agreed. Therefore, the outcome of the review is reported to this meeting as it is the first meeting of the Committee in 2016.
11. Enclosed as appendix 'A' to this report is a headline summary of proposed changes from the review, set out Part by Part. Set out below is a more detailed precis of the main changes proposed.

## **Main Proposed Changes From The Review**

12. Part 2 of the Constitution sets out the Responsibilities for Functions. This includes the detail of the functions which are the responsibility of, and have been delegated to, Full Council, Cabinet, the Council's Committees, and its officers. Part 2 also sets out all the terms of reference for the Committees, and the levels of responsibility for the Cabinet Portfolio Holders.

### **Terms of Reference For Committees**

13. All Committees received their respective terms of reference as part of the review and were invited to review them accordingly. There were no changes proposed to the Licensing Panel, Personnel & Development Committee, Standards Committee and Improvement & Review Commission. Minor changes were proposed to the terms of reference for the Audit Committee, High Wycombe Town Committee, and Joint Staff Committee. Planning Committee has proposed more detailed changes, as the existing terms of reference no longer properly reflected the proper function of the Committee. The terms of reference for the Regulatory & Appeals Committee will have been reviewed by the Committee through an earlier item on the agenda for this meeting.

### **Cabinet & Individual Cabinet Member Decision-Making**

14. The terms of reference for the Cabinet were also reviewed, and proposed changes include updating references to legislation and deleting repetition.
15. In relation to Individual Cabinet Member Decision-Making, it is proposed to amend the existing Part of the Constitution to seek to make this process more simple and straightforward to understand and operate. Currently the Constitution lists each Cabinet position individually with areas of functionality listed. It is proposed to simplify and streamline the process by stating that Cabinet Members have delegated power to make all non-Key Decisions within their area of responsibility unless that function is already delegated in the Constitution to an officer. The definition of what is a Key Decision is covered at paragraph 19 below. The Cabinet Member may still choose to decline to exercise individual delegated power, and refer the decision to the Cabinet as a whole if he/she feels for any reason that it is a decision more appropriately made by the Cabinet collectively. If the relevant Cabinet Member is not available or unable to exercise the delegated authority at the appropriate time, the Leader of the Council, or in his/her absence, the Deputy Leader of the Council, may instead take the decision. This is a model used by other local authorities.
16. In Part 6 of the Constitution, the management structure of the Council will also include the Council Decision-making chart and functions delegated to each individual Cabinet member.

### **Officer Delegation Scheme**

17. As referred to above, work was previously undertaken to improve the layout of the Constitution by bringing relevant Sections together. This included bringing together Officer delegations into one part for each Head of Service, as previously these were spread over numerous Sections.

18. At that time, some work was also undertaken to review the content of the delegations so the work undertaken in the current review sought to build on the work previously undertaken. There has been a necessity in places to update the delegations where new legislation has replaced older references, resulting in new procedures which have been better reflected in the delegation scheme. The current review proposes no changes to the levels of delegation.

### **Cabinet Procedures and Processes**

19. Part 3 D of the Constitution sets out the procedures and processes for the Cabinet. It is proposed to update this document to ensure the correct legislation references are included. As part of this work, it is also proposed to amend the Council's definition of what constitutes a 'Key Decision'. Within broad legal parameters, there is no absolute legal definition, and that adopted by different Councils can differ. The Council's existing definition is long and not easy to interpret. It is proposed to make this definition shorter, clearer and easier to understand and interpret.
20. Appendix 'B' to this report sets out the statutory definition of a Key Decision, the existing Council definition, and the new proposed definition.

### **Contracts Standing Orders**

21. Part 3 F of the Constitution is the standing orders relating to Contracts. As a result of new legislation relating to procurement rules, officers have been working to review the existing standing orders to ensure they reflect the new legislation. An opportunity has also been taken to simplify and adjust certain levels. Attached as appendix 'C' to the report is a summary of the proposed changes for consideration.

### **Financial Regulations**

22. A comprehensive review of the Council's Financial Regulations has been undertaken to reflect both changes that have taken place within the organisation and to provide further clarity on key financial processes. Where appropriate, procedures have been streamlined and requirements reduced to improve accountability and decisions.
23. The proposed changes to the Regulations reflect changes to reporting lines and improvements to business processes, to ensure that officers have greater clarity over key financial processes and accountability. There is one proposed change to financial limits where an increase is being proposed to the level at which there is a mandatory requirement for a Purchase Order to be raised, from £250 to £500. This brings the threshold into line with the limit used on procurement cards, which have successfully operated at the Council for many years. The change will streamline purchasing and payment processing, whilst ensuring that appropriate and proportionate internal control is exercised over expenditure.

## **Public Speaking at Planning Committee**

24. Part 3 I of the Constitution is the public speaking rules for the Planning Committee. The existing document has been updated to mirror the guidance that is distributed to the public attending meetings of the Planning Committee. There are no changes in the rules, and an opportunity has been taken to ensure there is a consistency of approach to what the Constitution sets out and what is issued to members of the public.

## **Other Documents**

25. There are a number of documents within the Constitution that are the subject of annual reviews in their own right. Examples of these include the Anti-Fraud and Corruption Policy and Procedure (Part 5 E of the Constitution), and The Whistle-Blowing Policy (Part 5 F of the Constitution). As a result, these documents have not been reviewed as part of the current wider Constitution review.
26. In addition, other documents within the Constitution have been the subject of separate recent reviews. The Members' Code of Conduct (Part 5 A of the Constitution), and the Arrangements for dealing with Standards Allegations Under the Localism Act 2011 (Part 5 B of the Constitution) have both been reviewed and updated by the Standards Committee, and proposed changes were endorsed by Full Council in December 2015. The Employees' Code of Conduct (Part 5 G of the Constitution) has been reviewed and updated by the Personnel and Development Committee, with proposed changes endorsed by Full Council in December 2015. The Members' Allowances Scheme at Part 4 of the Constitution has also been the recent subject of a review by the Independent Remuneration Panel, and Full Council in December 2015 considered recommendations from the Regulatory and Appeals Committee. A sub group on allowances has met since Full Council and further recommendations will be coming back to the Committee in due course.
27. The current review is also not proposing changes to certain documents within the Constitution, as they simply set out a factual position, or are the subject of frequent separate reviews, or are simply not in need of any changes. These include the Proper Officer Functions (Part 2 D of the Constitution), Councillor Roles (Part 2 E), Council Procedure Standing Orders (Part 3 A), Improvement & Review Protocol (Part 3 E), Officer Employment Procedure Rules (Part 3 H), Member/Officer Relationships (Part 5 C), and Scheme for the Enrolment for Honorary Aldermen (Part 5 H).

## **Consequential Changes**

28. There is a current delegation within the Constitution to the Head of Democratic, Legal and Policy Services to effect any consequential changes to the Constitution arising from changes to legislation which are mandatory on the Council and this also includes amendments to any changes in Officer Job titles, Service Departments (arising from restructurings), Cabinet Member portfolio details, and names of Committees.

29. With regard to Contract Standing Orders, when this section of the Constitution was last updated in 2013 the following wording was ultimately approved: “Delegated authority be given to the Head of Finance and Commercial Services, in consultation with the Chairman of the Regulatory and Appeals Committee and the District Solicitor, to make any minor amendments deemed necessary to the Contract Standing Orders as of 1 August 2013.” The intention was that minor amendments could be made to any future version of Contract Standing Orders, provided the delegated authority outlined within the wording was secured.
30. However, the text above could be interpreted as restricting the scope to amend only the Contract Standing Orders authorised as of 1 August 2013. For clarification purposes, it is therefore proposed that the following replacement delegation be approved: “Delegated authority be given to the Head of Finance and Commercial Services, in consultation with the Chairman of the Regulatory and Appeals Committee and the District Solicitor, to make any minor amendments deemed necessary to Contract Standing Orders and to reflect within Contract Standing Orders any changes in controlling legislation.”

### **Documentation**

31. Due to the size of the Constitution, it has been considered to be unduly cumbersome to include the full original, tracked, and proposed changes in their entirety within this report. However, the documents are available electronically with this report as part of the agenda for this meeting on the Council’s web site. Those relating to the Contract Standing Orders, however, are not included as the proposed changes enclosed at appendix ‘C’ to this report require approval before being inserted into the document. The documents are also available on the Members’ Intranet. Any member wishing to receive a copy of any documents, or the documents in full can contact Democratic Services at [committeeservices@wycombe.gov.uk](mailto:committeeservices@wycombe.gov.uk), and arrangements will be made for the documents to be sent electronically.

The existing version of the Constitution can be found on the Council’s web site.

32. All Members have also been asked to submit any detailed questions no later than 48 hours in advance of the meeting to ensure a response can be given at the meeting.

### **Next Steps**

33. The recommendations of the Committee will be presented to Full Council for consideration at its next meeting on 11 April 2016.

### **Background Papers**

Existing Council Constitution

Tracked Changes Showing Proposed Changes in full