

Report to Regulatory and Appeals Committee

REVISIONS TO THE CONSTITUTION

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PROPOSED DECISION OR RECOMMENDATION TO COUNCIL

At this stage there would be no recommendation to Council however the final amendments would be referred to Council for approval.

Corporate Implications

This report has been prepared to consult the Members of Regulatory and Appeals Committee on a proposed review of the Constitution. There are no specific changes recommended at this stage but a report will come back to the Committee once the review has been completed.

Executive Summary

1. Regulation and Appeals Committee agreed at its meeting in July that a review of the Constitution should be conducted to ensure that it continues to be compliant with current law and to ensure that the document remains clear. A review has been carried out which has informed the recommendation to prepare a new Constitution and the reasoning is set out within the report. This report seeks Members views on whether to progress a rewrite and if so what form the rewrite should take.

Sustainable Community Strategy / Council Priorities - Implications

2. The constitution is a governance document which is designed to ensure that there is a clear record of the procedures which are agreed by Council and to help everyone to understand the procedures. It would help to ensure that the Council's decision making processes are sound and decisions are not vulnerable to challenge.

Background and Issues

3. The Council is required by s37 Local Government Act 2000 to have a Constitution.

A local authority operating executive arrangements or alternative arrangements must prepare and keep up to date a document (referred to in this section as their constitution) which contains—

(a) such information as the Secretary of State may direct,

(b) a copy of the authority's standing orders for the time being,

(c) a copy of the authority's code of conduct for the time being under section 51, and

(d) such other information (if any) as the authority consider appropriate.

(2) A local authority must ensure that copies of their constitution are available at their principal office for inspection by members of the public at all reasonable hours.

(3) A local authority must supply a copy of their constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

4. The Wycombe District Council Constitution was last reviewed in 2016 and at that stage a number of changes were made to bring it up to date. Over the years, since its original implementation in 2002, the Constitution has been amended regularly to give effect to changes which have been required by either internally to assist delivering or to reflect nation changes in law and guidance.
5. It is inevitable that a document which is subject to regular amendment eventually reaches a point where a more fundamental review is required to ensure that the document continues to work effectively as a whole and that the changes are consistent in style and the meaning remains clear.
6. There is also a greater sense of public transparency and accessibility than at the time it was originally drafted. Although the changes which accompanied the introduction of 'New Council Constitutions' by the then DETR (later ODPM) were intended to bring about a new era of Transparency, Accountability and Efficiency the actual constitutions which were produced as models which all local authorities drafted and implemented in accordance with government guidance were not as accessible as they might have been.
7. There were long, very wordy and in some respects the logic of the layout which was recommended by government guidance at the time was not particularly 'user friendly'. There is no requirement to follow the model (although there are some mandatory elements) and many Councils who are now well versed in drafting their own constitutions, rules and procedures, have chosen to adopt simpler and more transparent and accessible ways of describing their democratic arrangements.

Review of the Constitution

8. The Head of Democratic, Legal and Policy Services has reviewed the Constitution with reference to the following:
 - The original guidance from government on drafting Constitutions within New Political Arrangements in 2002;

- An earlier draft of the Wycombe Constitution dated 2010 (to highlight recent amendments and the changing document);
 - Constitutions of other authorities;
 - Current practice within the organisation.
9. This review has identified that the passage of time coupled with the regular amends has led to a situation where the Constitution no longer sits together as a whole. In some small instances the Constitution does not reflect well understood practice within the organisation; in others the constitution is in conflict with itself but more commonly it is not clear what the intended meaning is. There are some instances where Members and Senior Officers who have been consulted have not appreciated the effect of the words and others where the context of the words has been altered which has impacted on understanding. This apparent lack of clarity places the authority at risk of being considered to have failed to follow its own rules and processes (procedural impropriety or maladministration) or for decision makers to have exceeded their powers (*ultra vires*) and therefore opens the Council to possible challenge. It is suggested that in reviewing and improving the document so that it is a transparent and cohesive document, there is an opportunity to make the Constitution shorter, clearer and more accessible both for those outside and those operating within the organisation.
 10. In 2002 the Constitution was produced in hard copy by all Councils and in the majority of Councils (including Wycombe District) was distributed to Members as part of a handbook. With austerity and the need to make the document more widely accessible PDF versions of Constitutions started to appear on Council websites and then in time hard copy versions were no longer distributed. The PDF web version was often not easy to use and whilst some may still print off a hard copy others may simply avoid reading the document and ask others to advise or worse still assume they know the content increasing the risk of a disconnect between the Constitution and practice.
 11. It is accepted that putting PDF documents on a website as an alternative to developing web content is not good practice and the public will not readily access a large document for downloading. It is therefore suggested that effort should be made to prepare at least an accessible summary for public consumption in a web friendly format with greater scope for searching and browsing the detailed procedures elsewhere in the Constitution. The production of the whole of the Constitution as web content would be time consuming to achieve and the relatively small number of hits by the public on the Constitution means this is not justified, but a hybrid approach is likely to strike the right balance between efficiency and accessibility. For those using the document regularly for reference the shorter and simpler the document the easier it will be to use in any event even when browsing online.
 12. The proposal is that the amendments would clarify but not change the meaning of the Constitution in any significant way (other than to ensure consistency and accuracy). Where it is necessary to make changes to the Constitution which do affect the meaning or distribution or allocation of responsibilities these would be specifically highlighted and a rationale

provided for any changes to explain why they were needed and what improvements they are designed to achieve. For example there are some proposed changes to the procedure rules for procurement and finance identified to streamline and make the processes more efficient. These changes would be separately identified and the effect would be explained.

13. The review provides broad scope for Members to identify ways in which they would like to see the Constitution improved subject always to the legislative framework in which the Council's democratic arrangements sit. Some suggested areas for improvement are set out below. This report is designed to enable members of the Regulation and Appeals Committee to set out the style and nature of the Constitution which they would like to see.

Part 1 Summary

14. The government produced a model Constitution in 2002 and on this the majority of Constitutions were based. The Constitution although a statement of rules for the Council was also intended to be an outward facing document providing transparency to the public. The Summary and Articles section contains an overview of the Council. It is the part of the Constitution which, of all parts, appears to be directed to the public as it includes a broad description of the rights of Citizens as well as a basic statement about how the Council operates. The current draft largely reflects the model constitution in style and content.
15. In addition to the broad description this section contains some specific information which does not appear elsewhere in the Constitution eg the content of the Council's Policy Framework. The scope of the powers of the Executive is determined by the Policy Framework but this section does not sit within the Responsibility for Functions section. As a result there is limited understanding across the Council of the content of the Policy Framework.
16. The detailed information in Part 1 is set out in a series of 15 Articles. The majority of detailed rules are set out in the later parts of the Constitution. The consequence is that there are several sections through the Constitution which describe the functions of one decision making body eg Council. These include for example a description of Full Council is given in Part 1 (the Policy Framework) this includes a list of the documents which must be approved by the Full Council. In Responsibility for Functions under Part 2 of the Constitution a description of the functions of Council is given and the matters which it has delegated to Committees. There is then in Part 3 a set of Council Procedure Rules which describes how Council operates. This makes it difficult for those who want to use the document as a reference tool to understand how and when it is necessary to take a report to Council.
17. It also means that the broad introductory description of How the Council Works is not very accessible because it is dotted with detailed information. Furthermore 'Articles' has a legalistic tone and has the potential to be off putting to a public audience. It is proposed therefore that this section be completely deleted and re-written.
18. The detailed content of the Articles could be incorporated into the main body of rules and procedures where relevant and the remainder of the section

should be a broad overview of 'How the Council Works' which can be written in a simple style more accessible to public and those new to the organisation. This section could also be produced in an online illustrated format with simple diagrams and pictures of eg the Leader, the Chairman, etc, so that a member of the public reading this section would have an immediate introduction to how the Council works. A starting sample for this section, together with the section it is intended to replace is attached at Appendix A and B to this report. A proposed accessible online format is attached at Appendix C.

Part 2 Responsibility for Functions

19. The remainder of the Constitution can then focus on the main description of the distribution of decision making powers of each element of the Council's decision making arrangements. It is suggested that a Chapter for each element with all information relevant to the role set out in one place would aid transparency. The following headings are suggested:

Non-Executive

Council:

- Matters reserved to full Council by law
- Matters reserved to full Council by local choice
- Council Procedure Rules
- The Budget and Policy Framework Procedure Rules

Council Committees:

- Planning (Including Planning Protocol and Public Speaking)
- Licensing
- Standards
- Regulation and Appeals
- Personnel and Development

Executive

- Leader
- Cabinet
- Portfolios
- Matters reserved to Cabinet by Local Choice
- Cabinet Procedure Rules
- Access to Information Procedure Rules

Committees with Executive and Non-Executive Functions

- Audit
- High Wycombe Town Committee

Scrutiny

- Improvement and Review Commission
- Health Scrutiny
- Improvement and Review Protocol

Joint Arrangements

- Chilterns Crematorium Joint Committee
- Joint Waste Committee for Bucks

Councillors

- List of all the Council Wards with Councillors
- Each Councillor together with their contact details and register of Interests
- Members Allowance Scheme
- Roles of Councillors (Job Descriptions)
- Members Code of Conduct
- Members Planning Code of Good Practice
- Member/Officer Protocol
- Scheme of Enrolment of Honorary Aldermen

Officers

- Management Structure
- Proper Officer Functions
- Scheme of Delegation to Officers
- Employee's Code of Conduct
- Contract Procedure Rules
- Finance Procedure Rules
- Staff Employment Procedure Rules

- Anti-fraud and Corruption Policy and Procedure
- Whistleblowing Policy and Procedure

Delegation of Responsibilities

20. The distribution of the functions of each body or individual through the constitution and the individual lists of powers allocated to committees and officers leads to a high risk of conflict, omission or duplication. There are also places where the delegations have become very broad to allow discretion to act in times of urgency. This level of delegation is however open to abuse and there are ways of building in opportunities for urgent decisions in exceptional circumstances without changing the general levels of delegation. Where this is the case it is suggested some changes to the levels of delegation should be considered as part of this review to ensure a consistent approach in relation to all officers. Where there is a need for specific exceptions eg through temporary delegations (such as those achieved through a Cabinet report by law are limited to six month in duration) then these should form part of a separate list of exceptions.
21. It is suggested that in reviewing the description of the functions of each decision maker the description could be replaced with a new comprehensive description based on the legislative framework and the existing delegations be summarised and rephrased as a simple description of matters which can be taken by that body. It should be hierarchical ie Council delegates to Committees so can make any decisions which it has delegated to a Committee or officers (subject always to advice of officers as to the merits in doing so).
22. It should be made clear that Council is not able to take decisions which are by law the responsibility of the Executive or delegated by the Executive to officers. It should also be made clear that when an officer is appointed as a Proper Officer eg the Local Returning Officer this has the effect of legislation providing powers directly to an officer role and these powers cannot be exercised by any other decision maker than a properly appointed deputy.
23. In reviewing the delegations to officers the extent of officer delegation should be made transparent and will need to be kept current in order to ensure that the Council is not open to challenge. If each individual officer power is listed there is a high risk that a power may be missed. Recognising this many authorities have adopted the approach of reversing the scheme so that officers are delegated all powers within a certain functional area EXCEPT and the exceptions would make clear those matters which officers could not decide and which must be reserved to Members. This provides greater clarity about matters which are reserved to Members whilst reducing the risk that the scheme becomes out of date or misses a relevant power. It also avoids the need to amend the scheme with each change of legislation.
24. The Exceptions will be detailed under a number of headings:
 - Financial
 - Legal
 - Contractual

- Land
- Planning
- Temporary delegations

25. The scheme would set out which individuals/bodies are required to make decisions at each level. Where consultation is required with a particular officer eg the s151 Officer, this would be detailed within the scheme. Decision making would always sit with a single body or person (not more than one) so that there is clear accountability for the decision and no risk of conflicting decisions being made. Decisions to be made by officers in urgent or emergency situations should be limited to the Chief Executive or her appointed deputy in her absence in consultation with the Leader (where the powers do not already sit with the Executive) or her Deputy. This could include the need to spend in the event of a civil emergency carrying out the actions detailed within the Council's emergency plan and could also include the need to take investment decisions swiftly to take advantage of a time limited opportunity – exceptions to the Chief Executive would be separately described and therefor more transparent than individual exceptions within the body of the Officer Scheme.

Consultation

26. Consultation is taking place at this stage with Regulation and Appeals Committee Members. Consultation would also be required with key officers including those responsible for governance. The result would be presented to Regulation and Appeals Committee before being referred to Council for consideration and approval.

Conclusions

27. Members are requested to consider the proposals in the report and provide views on the form of draft which they would like to see referred to a future meeting.

Next Steps

28. It is proposed that an initial revised draft is prepared based on the comments received from the Committee and this draft be referred to the next meeting of the Committee.

Background Papers

The Council's Constitution.

Local Government Act 2000

New Council Constitutions: Guidance to English Authorities