

Title of Report	Constitution Review
For Consideration By	Constitution Committee
Meeting Date	27 April 2023
Classification	Open
<u>Ward(s) Affected</u>	N / A
Director	Dawn Carter-McDonald, Director of Legal, Democratic and Electoral Services

1. Introduction

- 1.1. This report updates Members of the Constitution Committee on progress by the Constitution Officer Working Group (“COWG”) with the review of the Council’s Constitution and presents first and final drafts of various sections for review and approval (as appropriate).
- 1.2. With regards to the format of meetings of the Committee, the approach adopted at the meeting on 30 January 2023 will continue to be used. Rather than using a ‘page turn’, Officers will instead:
 - Present an outline of what the relevant Part / Section is intended to do;
 - Highlight any significant proposed changes from the current Constitution; and
 - Raise issues / queries for discussion by the Committee to aid officers with future amendments.

2. Recommendations

- 2.1. **That the Committee consider and provide comments / observations on the documents accompanying this report in Appendices 2 to 10 and that these comments / observations be considered by the Constitution Officer Working Group.**

3. Background

- 3.1. In order to assist members of the Committee with the arrangement of the new Constitution, the working draft index is appended to this report at

Appendix 1. Members will note that compared to the working draft appended to last month's meeting, the Protocol on Elected Mayor / Councillor and Officer Relations has been moved from Part 7 (Elected Mayor and Councillors) to Part 9 (Codes and Protocols). The rationale for this is because the protocol relates not only to the Elected Mayor and Councillors but also Officers and therefore, on reflection, it is considered that it does not naturally sit in either Part 7 or Part 8 (Officers) and as such should be moved to Part 9.

- 3.2. Members should note that the COWG's efforts to improve upon the wording used in the Constitution to provide readers with greater clarity and to reflect the principles of plain English will continue until the new edition of the Constitution is finally adopted. This is an iterative process as the Constitution Officer Working Group considers comments from this Committee and others and resolves suggested amendments / additions. It is also something that requires time for reflection.

Part 4, Section C - Budget & Policy Framework Rules (Appendix 2)

- 3.3. The Budget and Policy Framework Rules govern how those documents which form the Council's Budget and Policy Framework, as described in Article 4.7 of the Constitution, are to be developed and adopted. The Rules also govern how decisions outside of the framework can be made and call-in arrangements by Scrutiny Commissions.
- 3.4. The Rules have been the subject of review by the COWG and colleagues from finance. Amendments to the Rules have been made to ensure that the Council's decision-making is compliant with legislation. As a consequence these amendments, which appear in paragraph 2.1(f) onwards, are not something which this Committee may, as a matter of principle, seek to amend.

Part 5, Section A - Financial Procedure Rules (Appendix 3)

- 3.5. The Financial Procedure Rules provide the framework for the financial administration of the Council with a view to ensuring that the Council's financial affairs are conducted in a sound and proper manner, constitute value for money and minimise the risk of legal challenge to the Council.
- 3.6. The Rules have been the subject of review by colleagues from finance to ensure that they remain appropriate and consistent with the Council's practice. Some minor amendments have been made by finance colleagues, but these do not affect the overall scope or approach to the existing rules.
- 3.7. In addition, there has been some adjustment to where information is presented, for example moving information about the role of Group Directors from the introduction to the relevant section within the rules. Again this does not affect the overall scope or approach to the existing rules.

- 3.8. As the Council must ensure that its financial administration is compliant with legislation, the Rules are not something which the Committee may, as a matter of principle, seek to amend.

Part 5, Section B - Contract Standing Orders (Appendix 4)

- 3.9. Contract Standing Orders are made by the Council pursuant to section 135 of the Local Government Act 1972. Section 135 provides that the Council may make standing orders with respect to the making of contracts and shall make standing orders with respect to contracts for the supply of goods or materials or the execution of works. The section requires that such standing orders shall include provision for securing competition for contracts and for regulating the way in which tenders are invited, although they may exempt from these provisions contracts below a price specified by the Council and may exempt contracts where the Council is satisfied that the exemption is justified by special circumstances.
- 3.10. The Rules have been the subject of review by colleagues from procurement to ensure that they remain appropriate and consistent with the Council's practice. In addition, references to EU legislation have been removed.
- 3.11. As the Council must ensure that its approach to procurement is compliant with legislation, the Rules are not something which the Committee may, as a matter of principle, seek to amend.
- 3.12. The Committee should note that the Standing Orders will need to be reviewed again once the Procurement Bill, which is at the report stage in the House of Commons, is enacted and brought into force to ensure that they are compliant.

Part 8, Section A - Proper Officers Roles and Functions (Appendix 5)

- 3.13. A proper officer is an officer appointed by the Council to carry out certain administrative functions as required by statute; for example receiving or giving notices, certifying or authenticating documents, keeping registers, and issuing summonses for meetings. This section of the Constitution lists such functions and identifies the officer who is responsible.
- 3.14. The only changes that are proposed from the relevant part of the current Constitution are as follows:
- To reformat the table of functions so that the applicable Act / Regulations appear in the same row as the function - previously, sub-headings were used for each piece of legislation which would result in the reader having to scroll back and forth;
 - To update the titles of various Officers to reflect current names; and
 - To provide that the Chief Executive will be the Proper Officer in respect of any statutory provisions which either have not yet been the subject of

'allocation' or which may come into force in the future. This is considered necessary to protect the Council's interests.

Part 8, Section B - Officer Employment Rules (Appendix 6)

- 3.15. The Council's Officer Employment Procedure Rules give effect to the legislative provisions of the Local Government and Housing Act 1989 and other statutory regulations around the employment, discipline and dismissal of Council employees. These include the statutory safeguards afforded to the Head of Paid Service (Chief Executive), s151 Officer and Monitoring Officer.
- 3.16. The Rules have been the subject of review by the Director of HR & OD and the Council's employment lawyers to ensure that they remain compliant with legislative requirements.
- 3.17. Given that the Rules are reflective of legislative requirements, they are not something which this Committee may, as a matter of principle, seek to amend.

Part 9, Section C - Protocol on Elected Mayor / Councillor and Officer Relations (Appendix 7)

- 3.18. The Council's Protocol on Elected Mayor / Councillor and Officer Relations is designed to promote the highest standards in public life and harmonious working relationships between politicians and officers, whilst recognising the varied and complex relationships that exist.
- 3.19. The existing protocol has been the subject of a review and refresh to provide greater clarity and understanding not only for elected members and officers, but also by those who would wish to understand how the relationship operates. The substantive revisions include:
- The summary table at the beginning of the document;
 - A new section entitled "The Relationship: General Points";
 - Re-drafting of the sections around the role and expectations for both members and officers, including the use of bulleted lists to
 - An update to the publicity and press releases section to refer to the Code of Recommended Practice on Local Authority Publicity;
 - An update to the correspondence section to reflect that letters are not the sole means of communication and many formal communications now occur via email; and
 - The collation of the mechanisms for dealing with any issues into one section.

Part 9, Section D - Protocol on the Governance of Council Interests in Companies (Appendix 8)

- 3.20. It is essential from a good governance perspective that the Council needs to ensure the right balance between the needs of any local authority trading companies with regards to their ability to have the right tools to enable them to be successful, whilst also acknowledging the need for democratic accountability, a commitment to the Council's goals, and compliance with the Council's organisational systems.
- 3.21. This has been brought into sharper focus with local authority company failures being cited in various recent best value reports and public interest reports (e.g. Liverpool, Nottingham, Croydon).
- 3.22. In light of this, it is proposed that, in addition to the internal documentation which exists around the establishment of such alternative service delivery vehicles, the Council adopt a protocol which details the high-level governance arrangements which will apply. The Protocol is derived from a model protocol issued by Lawyers in Local Government, with appropriate amendments to reflect the Council's current practice.
- 3.23. The Protocol has been drafted in consultation with the s151 Officer, who acts as the Council's Intelligent Shareholder for any companies established by the Council.

Appendices - Terms of Reference of Council Committees etc (Appendix 9)

- 3.24. As highlighted at the last meeting of the Committee, the COWG has been developing a revised format for the terms of reference of the various Council committees, boards, panels etc. Currently, the terms of reference do not have a standard approach in terms of how they are presented but rather have reflected individual drafting styles as they have been established over time. This can lead to different information being presented between committees etc and information being 'lost' within lengthy paragraphs or not being presented at all, leaving the reader to locate it within other parts of the Constitution (for example, the relevant quorum).
- 3.25. The COWG wishes to seek the Committee's views on the proposed new format before undertaking the task of making amendments to all the terms of reference. The document presented at Appendix 9 is therefore a sample.
- 3.26. The Committee is reminded that amendments to the actual remit of the Council's various committees etc are not something which is within the authority of this Committee. The terms of reference were last reviewed during 2021/2022.
- 3.27. The Committee should also note that where the Council is not responsible for the administration of any committee etc, or where the body has

themselves approved the format of their terms of reference, then those terms of reference will remain in the format approved by that body or the authority which administers them.

Engagement (Appendix 10)

- 3.28. Members will recall that at the meeting last month, a verbal update was given in relation to the planned engagement concerning the Constitution Review to take place in May / June. The COWG has been working alongside colleagues from the Consultation and Engagement Team to devise an engagement plan and a copy of the draft plan is appended to this report. Officers are considering the questions / discussion points to be posed at the planned focus groups and these will be circulated to members of the Committee for comments / observations via email in due course.
- 3.29. In addition to engagement with the public, the COWG intends to undertake a survey amongst Officers to gauge their views on the current Constitution before undertaking some group sessions in June to gather opinions about the new version.

4. Comments of the Group Director of Finance and Corporate Resources.

- 4.1. There are no financial implications arising from the recommendations contained within this report.

5. Comments of the Director of Legal, Democratic and Electoral Services

- 5.1. Section 37 of the Local Government Act 2000 requires that the Council must prepare and keep up to date a document known as the Constitution which contains a copy of the Council's standing orders, a copy of the Council's code of conduct, and such other information (if any) as the Council considers appropriate.
- 5.2. In addition, Article 15 of the Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution and to make recommendations for the way in which it could be amended in order to achieve its purposes.
- 5.3. There are no legal implications arising directly from this report.

Appendices

Appendix 1 - Working draft index to new Constitution
Appendix 2 - Budget & Policy Framework Rules
Appendix 3 - Financial Procedure Rules
Appendix 4 - Contract Standing Orders
Appendix 5 - Proper Officers Roles and Functions

- Appendix 6 - Officer Employment Rules
- Appendix 7 - Protocol on Elected Mayor / Councillor and Officer Relations
- Appendix 8 - Protocol on the Governance of Council Interests in Companies
- Appendix 9 - Terms of Reference of Council Committees etc
- Appendix 10 - Engagement Plan

Background documents

None

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