

Standards and Constitutional Oversight Committee
Tuesday, 12 June 2018

REPORT TITLE:	Review of Council Constitution
REPORT OF:	Assistant Director: Law & Governance (Monitoring Officer)

REPORT SUMMARY

The report presents an approach to taking forward a major review of the Council's Constitution.

RECOMMENDATION/S

The Standards and Constitutional Oversight Committee is asked to approve the progression of a significant review of the Council's Constitution, and for the Constitutional Review Working Group to give consideration to a scoping document to consider a timetable and set priorities for the review.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

Keeping the Constitution under review is a role of the Standards and Constitutional Oversight Committee. The Committee advises the Council on Constitutional issues generally, the Council having a statutory responsibility for maintaining a Constitution.

2.0 OTHER OPTIONS CONSIDERED

None, amendment to the Constitution being a Council function.

3.0 BACKGROUND INFORMATION

Section 37 of the Local Government Act 2000 requires a local authority operating executive arrangements to maintain a document (referred to as a 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, and
- (d) such other information (if any) as the authority considers appropriate.

Alongside the general guidance to the 2000 Act, in support of section 37 the Government issued a Modular Constitution setting out a suggested structure for the constitution including statutory governance requirements and matters traditionally covered by Standing Orders, financial regulations and schemes of delegation, while also including the new arrangements resulting from the implementation of executive style of governance introduced by the Act. While suggesting a structure, guidance did recognise that local choice existed and that individual Council's would find their own ways to organise how their own Council would work.

While the Council has from time to time undertaken reviews of various aspects of its Constitution, the significant rate of both primary and secondary legislation that has impacted on the Constitution, when taken alongside organisational restructuring and the changing environment and challenges facing the Council, means that a more significant and structured review of the Council's Constitution is now required. This review is required to ensure that all necessary statutory requirements are reflected, that where choice is available the Council has taken an informed view of the options available, and that the Constitution is fit for the purpose envisaged in guidance of providing the means for citizens and stakeholders to understand how the Council makes decisions and who is responsible for those decisions.

An initial oversight review of the Constitution revealed areas where the Constitution has varied from the Modular Constitution and where the Wirral Constitution does not include other documents which have come to be regarded as good practice for inclusion. In themselves these variations and omissions may not necessarily be a negative but, for example, this initial

review highlighted that the Budget and Policy Framework Procedure Rules had varied significantly and that there was no specific set of Executive Procedure Rules explaining the Council's executive arrangements. On the latter point, relevant content is contained elsewhere in the Constitution, but the current approach means that executive arrangements are not expressed explicitly thereby failing the purpose of transparency.

Some work to remedy the more immediate Constitutional issues has already been undertaken, with the Council at the meeting held on 5 March 2018 approving a revised form of Budget and Policy Framework Procedure Rules, and a Code of Conduct for Elected Members Dealing with Planning Matters intended for inclusion in the Constitution being presented to this meeting of the Committee for consideration.

It is proposed that work on the Constitution be progressed through the preparation of a scoping document, for consideration by the Constitutional Review Working Group, looking to prioritise work on the Constitution, the approach to prioritisation being as follows -

- Those areas of significant variation from the Model Constitution, where particular legal and / or corporate issues might be concerned, or where particular 'good practice' issues are considered priority. Issues for consideration here would include the Executive Procedure Rules referenced above; the schemes of delegation for both Council and executive functions at Part 3 'Responsibility for Functions', clarifying matters for Member and Officer decision making; and a specific Planning Code of Conduct for Members Dealing with Planning Matters which is presented for consideration elsewhere on this agenda;
- A significant review of the remaining Parts of the Constitution comprising a comparator with the Modular Constitution, consideration of statutory developments since the issue of the Modular Constitution, and the Council's arrangements and requirements going forward; and
- An overall view of the Constitution, ensuring that the work undertaken has presented all interdependences within the document in a consistent and properly referenced manner, and that the final document complies with the purpose of providing an understanding as to how the Council makes decisions and who is responsible for those decisions.

It is proposed that this scoping document would, alongside a prioritised listing to be determined by the Working Group of a number of ad hoc issues raised previously and falling more generally within the purview of the Working Group, form the basis of the work programme of the Working Group for the next 2-3 years which is the anticipated duration of the Constitutional Review project.

In undertaking the review, the Working Group should seek the views of such Members and Officers as it considers appropriate to the matter under consideration. The Working Group will forward recommendations to the Committee which shall, in turn, make formal recommendations to the Council in respect of the adoption of any revisions to the Constitution.

4.0 FINANCIAL IMPLICATIONS

There are no financial implications associated with this report as it deals with procedural matters only.

5.0 LEGAL IMPLICATIONS

There are no particular legal implications associated with this report beyond those noted above.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

There are no resource implications associated with this report as it deals with procedural matters only.

7.0 RELEVANT RISKS

While the Constitution can provide an important means of enabling citizens and stakeholders to understand how the Council makes decisions and who is responsible for those decisions, the Constitution also sets out the legal and procedural framework within which the Council makes those decisions. A properly maintained Constitution and recorded schemes of delegation can mitigate potential challenges to the Council's decision making.

8.0 ENGAGEMENT/CONSULTATION

No engagement or consultation has been undertaken on this report as it deals with procedural matters only.

9.0 EQUALITY IMPLICATIONS

There are no direct equality implications associated with this report as it deals with procedural matters only.

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APPENDICES

None.

REFERENCE MATERIAL

None.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date