

Committee: Standards and General Purposes

Date: 28 June 2021

Wards: All

Subject: Constitutional Changes

Lead officer: Louise Round

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Recommendations:

A. To recommend to Full Council that it adopt the following amended parts of the Constitution attached as appendices A-H to this report*:

- (i) Part 1 – Summary and explanation
- (ii) Part 2 – Articles
- (iii) Part 3A – Responsibility for Local Choice Functions
- (iv) Part 3B – Responsibility for Non-Executive Council Functions
- (v) Part 4A- Council Procedure Rules
- (vi) Part 4B -Access to Information Procedure Rules
- (vii) Part 4C – Budget and Policy Framework Procedure Rules
- (viii) Part 4E – Overview and Scrutiny Procedure Rules

*Tracked changes versions of the appendices are available from Democracy Services on request. A table setting out the substantive proposed changes is attached as appendix I

- B. To recommend to Full Council that it adopts the Scheme of Delegation to Officers attached as appendix J to this report insofar as it relates to non-executive functions and to agree it will form Part 3E and replace existing parts 3E, 3F and 7B of the constitution;
- C. To note that the Cabinet has been recommended to adopt amended versions of Part 3c (Responsibility for Executive Functions), Part 4D (Cabinet Procedure Rules) and the Scheme of Delegation to Officers insofar as it relates to executive functions which if agreed, will also be submitted to Full Council for the sake of completeness; and
- D. To authorise the Monitoring Officer to make such consequential and minor drafting amendments as she considers reasonably necessary including, without limitation, to renumber the parts of the constitution as appropriate.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At its meeting in July 2020, this Committee agreed to carry out a review of the Council's constitution and appointed a cross party member working group ("the working group") to oversee that process. The working group has met on several occasions since then and the Standards and General Purposes Committee is now being asked to consider a number of proposed changes to the constitution. The parts in respect of which changes are being

recommended are:

- i. Part 1 – Summary and explanation
- ii. Part 2 – Articles
- iii. Part 3A – Responsibility for Local Choice Functions
- iv. Part 3B – Responsibility for Non-Executive Council Functions
- v. Part 4A - Council Procedure Rules
- vi. Part 4B - Access to Information Procedure Rules
- vii. Part 4C – Budget and Policy Framework Procedure Rules
- viii. Part 4E – Overview and Scrutiny Procedure Rules

In addition, a new Scheme of Delegation to Officers is being proposed.

- 1.2. A number of the changes which have been considered relate to matters which are executive functions and under the provisions of section 9E of the Local Government Act 2000 the responsibility of for agreeing them lies with the Leader. He may decide that decisions in relation to those matters shall be taken by the Cabinet as a whole, a cabinet subcommittee, an individual cabinet member or officers. At its meeting on 22 June, the Cabinet will be asked to consider those proposed changes which relate to executive functions. They do not require the approval of full Council but for the sake of completeness, if agreed, those changes will be submitted to Council on 7th July alongside any changes agreed by this Committee.
- 1.3. There are some parts of the constitution which have not been considered by the working group because of time constraints. These are the financial regulations, the officer employment procedure rules (some amendments to which were considered by this Committee last year), the Officer Code of conduct and a number of protocols. Revisions to contract standing orders are the subject of a separate report on the agenda, as are proposed changes to the procedure for dealing with complaints against members.
- 1.4. Many of the proposed changes to the parts referred to in paragraph 1.1 above are drafting changes suggested to make the meaning of clauses clearer or to bring them into line with agreed existing practice or to reflect legislative or structural changes. Attached as appendix J is a table which captures those changes which could reasonably be considered be significant or points of principle and the most substantive of these are discussed below. The majority relate to the proposed new scheme of delegation and the Council Procedure Rules

2 DETAILS

Scheme of Delegation to Officers (new part 3E)

- 2.1. The overall approach of the current constitution to delegations to officers is to provide that unless something is specifically reserved for a member body, it is by default delegated to officers. However, these provisions are currently spread across a number of parts of the constitution and as a result can be quite hard to follow. It is also difficult to understand what the parameters of that officer decision making are. Accordingly, it is proposed to bring all the delegations into one composite scheme, regardless of whether the functions in question are executive functions or non-executive functions. The proposed draft scheme of delegation is at Appendix J.
- 2.2. This committee is being asked to approve the new scheme for recommendation to Full Council insofar as it relates to non-executive functions. If adopted, the new scheme will replace parts 3E (scheme of delegation by cabinet), 3F (scheme of delegation by Full Council) and part 7B (Scheme of delegation to officers by chief executive) of the constitution.
- 2.3. The proposed new scheme is a move away from the current scheme which has all authority vested in the chief executive who onwardly delegates to chief officers. There is no legal requirement to structure delegations in this way and it is common practice to set out in broad terms which chief officers, including directors, have responsibility for which areas of council business.
- 2.4. Provisions allowing for urgent decision taking by officers are included, to be exercised in consultation with the relevant cabinet member or committee chair as the case may be. Such decisions will still need to be taken in accordance with the access to information rules contained in part 4B of the constitution.
- 2.5. The scheme of delegation in the constitution is complemented by departmental management schemes, setting out “onward delegations” and financial limits for decision taking within departments. If the proposed new scheme of delegation is approved, these will be reviewed to ensure they are consistent with that scheme and reflect changes in structure/ job titles etc. since they were last updated.

Council Procedure Rules (Part 4A)

- 2.5.1 These rules were the part of the constitution which underwent the most discussion at the working group as it would be fair to say that over the years and by agreement between the political groups, practice on the ground has departed slightly from the written word of the Constitution.
- 2.5.2 **Strategic Theme Debates.** (Rule 2.3.g) It is proposed that the order of business is changed slightly so that all aspects of the debate on a particular strategic theme should be taken as one agenda item rather than being divided into their constituent parts as is currently the case. If agreed, the

debate would then follow this format

- (i) Cabinet member presents the report on the strategic theme
- (ii) Cabinet Member answers any written questions from councillors on the strategic theme submitted three clear working days in advance and any oral supplementary questions (15 minutes for this aspect)
- (iii) Motions on the strategic theme moved and seconded
- (iv) Debate on the strategic theme proceeds in accordance with the normal rules of debate

2.5.3 Where motions are submitted on the strategic theme, those motions currently need to be with Democracy Services by 9am on the day before the meeting. The draft changes to rules propose moving that deadline to 3 clear days before the meeting which will bring it into line with the time limit for submitting non-strategic theme questions. The working group was not agreed on this and there was a view that this should only happen if the report itself were circulated earlier than is currently the case (it goes out with the agenda). The draft attach includes an aspiration to circulate the report earlier but does not make it a formal requirement.

2.5.4 On the question of which strategic theme should be considered at a particular meeting, the rules (note to 2.3 f) currently provide that the five themes in the Council's business plan should be considered "on a priority basis in rotation". In practice, this does not happen and the groups have previously agreed that each group can choose a theme (or, more often, a subset of it) and the number of choices allocated to each group is calculated on a broadly proportionate basis and agreed at the beginning of the four-year cycle. The note in the rules also refers to consultation on the order of business taking place at "the cross party committee" although no such committee exists. It is suggested amending the wording to the following and removing the reference to the cross party committee. Elsewhere in the rules (rule 3.4) there is a reference to a pre-meeting with the Mayor to discuss timetabling of the meeting and this would continue.

"The entitlement to select the strategic theme to be considered at each meeting shall lie with the leaders of all the political groups represented on the Council on a rotational basis or otherwise as agreed between them"

2.5.5 Alternatively, current practice would more accurately be reflected by the following wording:

"The entitlement to select the strategic theme to be considered at each meeting shall lie with the leaders of all the political groups represented on the Council and the number of choices allocated to each political group should, so far as is reasonably practicable reflect the respective sizes of each group. The schedule setting out the timing of each group's nomination shall be agreed at annual council. "

Members are asked to consider which option they consider most appropriate.

- 2.5.6 **Time limit for submitting non-strategic theme questions.** (Rule 12.4) Although the working group felt it was right to wait for the report on the strategic theme to be circulated before requiring questions on that theme to be submitted, the group agreed that there would be some merit in non-strategic theme questions being submitted earlier in order to allow them to be circulated with the agenda. Currently they are circulated, together with the written answers to them, on the day of the meeting. Including the questions with the agenda would allow members of the public to know in advance of the meeting the kinds of issue that might be discussed. So the proposal is that the questions should be submitted 7, rather than the current 3, clear working days before the meeting. One member of the group felt that if this proposal were to be adopted, the answers should also be answered earlier than is currently the case. No final view has been reached on this aspect.
- 2.5.7 **Time allotted for non-strategic theme questions.** (Rule 12.6). The group considered whether the current 15-minute limit should be extended but although there was a general consensus that some self-discipline both in answering the written question and in putting the supplementary question, on balance the time limit should remain. However, they did consider that the Mayor should have the discretion to add any unused public question time to the member question time and this has been included in the proposed changes.
- 2.5.8 **Varying Times and Dates of Meetings** (Rule 5.1) This is proposed for amendment to make it clear that the ability, in exceptional circumstances, for the chief executive to vary or cancel meetings requires the consent of the chair of the meeting in question, although they no longer need formally to request this.
- 2.5.9 **Arrangements for Meetings** (Possible new Rule 21) Elsewhere on the agenda is a report on the future conduct of meetings in which some proposals are made for continuing remote participation in meetings notwithstanding the recent ruling of the High Court that the Local Government Act 1972 requires physical attendance at meeting by councillors and for arrangements to be made to allow members of the public to attend in person. Depending on the outcome of the Committee's consideration of that paper, a new council procedure rule is being proposed in order to ensure the new arrangements are reflected on the face of the constitution.

Budget and Policy Framework Procedure Rules (part 4C)

- 2.5.10 **Decisions outside the budget or policy framework** (Rule 5). some changes have been made to clarify the process to be followed where a ground for call in of an executive decision is that the decision would be contrary to the policy framework or contrary to or not wholly in accordance with the budget. At the moment advice from the Monitoring Officer (MO) is required but it is unclear at what point that advice should be received and what follows thereafter. The proposed process is:
- (i) Non-compliance with the budget or policy framework cited as a separate ground for call in;
 - (ii) Call in goes to Overview and Scrutiny Commission who take advice from the MO or S.151 officer;
 - (iii) If the MO or S.151 Officer concludes decision is compliant, it can be implemented forthwith;
 - (iv) If the MO or 151 officer considers it is not compliant, they produce a report to the Cabinet which is sent to all councillors;
 - (v) Cabinet meets to decide whether to proceed;
 - (vi) If Cabinet wishes to proceed, it refers the matter to Council;
 - (vii) Council either:
 - a) confirms decision is within policy framework; or
 - b) amends policy framework to make decision compliant; or
 - c) remits to Cabinet to reconsider and if they wish to proceed, to require them amend decision so it is in compliance.

Overview and Scrutiny Procedure Rules (part 4E)

- 2.5.11 **Call in Provisions** (rules 16 and 17). The process for deciding whether a request for call in is valid has been amended. The current wording implies that the full meeting of the Commission agrees the request for call in whereas they only consider it once the “threshold “criteria have been met. That judgement is made by the Monitoring Officer under rule16(e).
- 2.5.12 Perceived non-compliance with the policy framework or budget has been added as a specific ground for call in to reflect the legislative requirements and to ensure consistency with the budget and policy framework rules referred to above.

3 ALTERNATIVE OPTIONS

- 3.1. The Committee could choose not to accept the recommended changes although this would mean that there would continue to be inconsistencies between the wording in the constitution and practice on the ground which is not good governance and relies on the memories of those involved in various discussions over the years. This is a risk when officers leave and when there is regular change in the make-up of the political membership of the Council.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The changes proposed in this report have been the subject of consultation with the cross party working group and the Council's two independent persons.

5 TIMETABLE

- 5.1. If the Committee agrees the proposals set out in this report, they will be submitted for adoption by full Council on 7 July.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are no financial implications arising from this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legislative provisions governing the decision making processes of councils operating leader and cabinet executive arrangements are set out in chapter 2 of the Local Government Act 2000 and regulations made thereunder. The proposals in this report comply with those provisions.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

None

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