

Committee: Full Council

Date: 07 July 2021

Wards: All

Subject: Constitutional Changes

Lead officer: Louise Round

Lead member: Councillor Tobin Byers

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Recommendations:

A. To agree to adopt the following amended parts of the Constitution attached as appendices A-J 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 3C – Responsibility for Executive Functions
- (vi) Part 4A- Council Procedure Rules
- (vii) Part 4B -Access to Information Procedure Rules
- (viii) Part 4C – Budget and Policy Framework Procedure Rules
- (iv) Part 4D - Cabinet Procedure Rules
- (ix) 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 K.

- B. To recommend to Full Council that it adopts the Scheme of Delegation to Officers attached as appendix L to this report insofar as it relates to non-executive functions and to endorse it insofar as it relates to executive functions and to agree it will form Part 3E and replace existing parts 3E, 3F and 7B of the constitution;
- C. To agree the arrangements for meetings set out in paragraphs 2.5.13 – 2.5.22 and the protocol attached as appendix M, subject to review in six months.
- D. To agree that the changes shall come into effect on 8 July and 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, the Standards and General Purposes 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 met on several occasions and on 28 June 2021. the Standards and General Purposes Committee considered and agreed a

number of proposed changes to the constitution.

1.2. Under section 9E of the Local Government Act 2000, where functions are executive functions, the responsibility for establishing arrangements for their discharge lies with the Leader of the Council who in turn has delegated some of that responsibility to the Cabinet. At its meeting on 22 June, the Cabinet agreed changes to the Cabinet Procedure Rules and to Part 3B of the constitution, which relates to responsibility for executive functions. Those changes, together with the ones agreed by the Standards and General Purpose Committee are now being submitted for endorsement (for executive functions) and agreement (for non-executive matters) by full Council, and, 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 3C – Responsibility for Executive Functions
- vi. Part 4A - Council Procedure Rules
- vii. Part 4B - Access to Information Procedure Rules
- viii. Part 4C – Budget and Policy Framework Procedure Rules
- ix. Part 4D - Cabinet Procedure Rules
- x. Part 4E – Overview and Scrutiny Procedure Rules

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

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 K 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) (Appendix L)

- 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 L.
- 2.2. Council is being asked to approve the new scheme Council insofar as it relates to non-executive functions and to note and endorse it in relation to 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) (Appendix F)

- 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 initially proposed 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 Standards and General Purposes Committee agreed that the motions should be submitted earlier than at presently, namely by 9am on the Friday (two clear working days) before a Wednesday meeting but only on the basis that the strategic theme report is circulated seven clear days before the meeting, in other words, in advance of the agenda, in order to give members the opportunity to make any strategic theme motion relevant to the content of the report

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. The Standards and General Purposes Committee agreed to remove the reference to the cross party committee and to recommend the following wording which has been incorporated into the revised council procedure rules.

"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. "

2.5.5 **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. The Standards and General Purposes Committee agreed this and also the suggestion of one member that if this proposal were to be adopted, the answers should also be answered earlier 48 hours before the meeting.

- 2.5.6 **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.
- 2.5.7 **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.
- 2.5.8 **Arrangements for Meetings** (Possible new Rule 21) The Standards and General Purposes Committee considered arrangements for future meetings and their recommendations are set out at paragraphs 2.5.13 to 2.5.22 below. If Council accepts those recommendations, a new council procedure rule will be put in place to ensure the new arrangements are reflected on the face of the constitution.

Budget and Policy Framework Procedure Rules (part 4C)

- 2.5.9 **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)

2.5.10 **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).

2.5.11 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.

Arrangements for meetings

2.5.12 As a result of the expiry of the emergency legislation enabling council and committee meetings to be held virtually, the law requires meetings to take place in person and for arrangements to be made to allow members of the public to attend physically should they choose. The Standards and General Purposes Committee considered a number of proposals for future meetings which will ensure compliance with those legal requirements but which will allow the council to take advantage of the flexibility which the technology can provide. This will reflect the different circumstances of councillors as well as increasing public participation. Licensing Committees are constituted under different legislation and may continue to be held remotely.

- 2.5.13 **Meeting Room.** It is not yet known whether all Covid restrictions will be lifted on 19 July, but even if they are, given the current infection rates, it would seem prudent to hold meetings in larger rooms which will allow for social distancing in some form. It is therefore proposed that most formal meetings take place in the Council Chamber. This also allows for the combination of remote and physical participation. Other meetings, not legally required to take place in person, for instance the Joint Cemetery Board, could continue to meet virtually and the possibility of using hybrid technology for consultative committees and community fora will be explored to allow them to take place in the relevant locality while maintaining some element of remote participation. The position will be kept under review in light of the prevailing conditions and where the law allows a choice to be made, the Chair of the relevant meeting will be consulted about the preferred option.
- 2.5.14 **Full Council.** It will be possible to fit all 60 councillors, alongside a limited number of officers and members of the public, in the Council Chamber for the purposes of full council meetings, and still comply with 1+ metres social distancing. However, it would be open to members to agree that instead of the full complement attending, some members would not attend, provided that the meeting was quorate based on the numbers in physical attendance. This would be subject to discussion and agreement between the groups on a case by case basis.
- 2.5.15 If this approach were adopted, members who did not attend the meeting in person would still be able to participate by Zoom. However, their attendance would not count towards the quorum or towards their attendance for the purposes of section 85 of the Local Government Act 1972 (“the six month rule”), and they would not be able to vote or formally move or second amendments.
- 2.5.16 **Remote Attendance by Members.** It is proposed that councillors who wish to attend a committee meeting to observe but who are not members of that committee should be able to attend remotely, including those who wish to speak on a specific item. However, it should be noted that although their attendance would be recorded in the minutes it would not count towards their attendance for the purposes of the six-month rule.
- 2.5.17 As in the case of full council, it is proposed that councillors who are members of the committee in question may attend remotely, provided there are sufficient numbers physically present for the meeting to be quorate. They could ask questions and participate in discussions but would not be able to vote and, as above, could not count their attendance for the purposes of the six-month rule. The councillor formally chairing the meeting would also need to be physically present.
- 2.5.18 Remote attendance by members of the committee will not be permitted for meetings of the Planning Applications Committee, or to Licensing

Committees should they at some point revert to being held in person.

2.5.19 **Public Participation.** Members of the public wishing to participate in a meeting, for instance by asking a question at full council, giving evidence at a meeting of an overview and scrutiny panel or speaking on a planning application, may continue to do so. However, if they wish to attend in person, they must be allowed into the meeting room. Where the numbers wishing to attend are significant, a ticketing system could be setup for these purposes. If necessary, attendees could be held in a socially distanced waiting area outside the Council Chamber whilst other items were being considered and each group brought in only for their specific item. This approach has been used in the past for other large meetings. Again, the extent to which this will be necessary will be kept under review in light of the prevailing conditions.

2.5.20 **Live-streaming.** Before the pandemic, although meetings were recorded and could later be viewed on the website, they were not livestreamed. Now that the technology is in place there would seem to be no reason why live streaming should not continue. Live streamed meetings have received between 20 and 554 views. Previously, average in person attendance was between 1 – 50 members of the public.

If the above proposals are agreed, a new council procedure rule 21 will apply to reflect the different arrangements. A meeting protocol, reflecting the risk assessment carried out, is attached as appendix M. The Standards and General Purposes Committee agreed to review the position after six months.

3 ALTERNATIVE OPTIONS

3.1. Council 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 and are recommended by the Standards and General Purposes Committee.

5 TIMETABLE

5.1. If Council the proposals set out in this report, they will be come into effect from 8 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. There is no express legislative provision allowing councillors to participate remotely in their capacity as councillor and there may be some risk of challenge on the basis that people not present at the meeting in accordance with the 1972 Act requirements should not be able to participate in debates on matters. However, as the Council's constitution allows councillors who are not members of bodies to attend and speak at their meetings, as well as members of the public, it would seem illogical to deny that opportunity to members of those bodies. Therefore, although the law has not been tested in this respect here would seem to be little risk in allowing this, particularly while Covid restrictions remain in place.

7.2. The statutory provisions governing council decision making are reflected in this report and the proposed amendments to the constitution.

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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