

REVIEW OF COUNCIL CONSTITUTION 2018/19

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Executive Summary:

To update the Constitution Commission on the progress of work that is being carried out to review and update the Council's Constitution with a view to having the completed constitution ready for recommendation to full Council in early 2019.

1. Recommendations

1.1 It is recommended that the Constitution Commission:

- (a) note the work of the Officer Working Group in reviewing the Constitution and providing the proposed updates in line with the external health check;
- (b) note the various parts of Constitution previously approved by the Commission for recommendation to the full Council as contained in the background reports
- (c) agree to recommend to Council, as part of the draft revised Constitution, the updated Policy Framework and Local Choice Functions;
- (d) note the inclusion of high level reference, (within Chapter 2 Functions and Responsibilities section, Part 6 of the draft revised Constitution) to the single Officer Scheme of Delegation, and Proper Officer List including the requirement for the Committee Services and Scrutiny Manager and Monitoring Officer to report any amendments to the Council on a quarterly basis;
- (e) agree to recommend to the Council the Officer Scheme of Delegation and the Proper Officer List to facilitate adherence to the reporting requirements contained at (c) above;
- (f) agree to recommend to Council as part of the draft revised Constitution, the updated Financial Regulations which also includes rules on the Acquisition and Disposal of Land and Buildings;

- (g) note and approve the provisions relating to Acquisition and Disposal of Land and Buildings as contained in section 19 to the Financial Regulations;
- (h) agree to recommend to Council, as part of the draft revised Constitution the Access to Information Procedure Rules - Procedure for the Determination of Planning Applications;
- (i) subject to any feedback comments from stakeholders and the Commission, agree to recommend to Council as part of the draft revised Constitution the revised Councillors' Planning Code of Good Conduct;
- (j) subject to any feedback comments from stakeholders and the Commission, agree to recommend to Council the Officer Scheme Of Delegation for Development Management Matters;
- (k) agree to recommend to Council as part of the draft revised Constitution the Officer Employment Procedure Rules;
- (l) Agree to recommend to Council, as part of the draft revised Constitution, the revised Code of Conduct for;
- (m) agree to recommend to the Council as part of the draft revised Constitution the revised Budget and Policy Framework Procedure Rules;
- (n) agree to recommend to the Council as part of the draft revised Constitution, the revised Protocol on Councillor-Officer Relations;
- (o) agree to recommend to Council, as part of the draft revised Constitution, the revised Council Procedure Rules, Cabinet Procedure Rules and Overview and Scrutiny Procedure Rules;
- (p) note and approve the updated terms of reference for the Audit Committee; and
- (q) agree to recommend to the Council the amalgamated draft revised Constitution, subject to any amendments raised at the Constitution meeting on 7 January 2019.

2. Introduction

- 2.1 The Constitution sets out how the Council operates, how decision are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The Council has a legal duty to publish an up to date Constitution and it should be reviewed at least annually with any necessary changes being normally considered at the Annual Council meeting.
- 2.2 The Council established a cross party Constitution Commission to consider proposed changes to ensure the Constitution is kept up to date. The Commission is scheduled to report on its work to the Council meeting in January 2019

- 2.3 An external review was commissioned by the Constitution Commission to check that the Constitution was up to date with legislation and best practice.
- 2.4 An Officer Working Group was formed to revise the Constitution in line with the external review in addition to reviewing other areas as recommended by the Commission. The review has been undertaken in phases with officers reporting progress and getting phased approvals and steer from the Commission on various parts of the Constitution. Previous meetings of the Commission were held on 26 September 2018; 18 October 2018 and 14 November 2018.
- 2.5 Various Stakeholders have been engaged in relevant aspects of the process including Councillors generally; Political Groups; Corporate Leadership Team; Finance; HR; Corporate Procurement Team and Audit.
- 2.6 This report pulls together all the work that has been carried out to revise the Constitution and further seeks approvals in relation to matters that were still outstanding during the previous meetings. The report also presents for the first time, a whole draft revised Constitution which is intended to be presented to full Council in early 2019 for approval subject to any comments from the Commission.

3. Draft Revised Constitution

- 3.1 This is included as an Annex and amalgamates all the work that has been undertaken to revise the Constitution so far including matters to be considered at this meeting on 7 January 2019. Officers will make any necessary amendments to incorporate any comments from the Commission at today's meeting. Officers will further review the document to ensure quality and undertake any further necessary tidy up exercise that may be required before it is presented to full Council.

4. Outstanding Matters from Phase 1

4.1 Budget and Policy Framework and Local Choice Functions

The Commission considered matters pertaining to Policy Framework and Local Choice Functions at its meeting on 26 September 2018. By law, the Council must have a policy framework. This is a list of plans and strategies which are relevant to the Council's functions and are required by law to be decided by the full Council, usually on the recommendation of the Cabinet. It was presented to the Commission at the meeting that the current Council's Policy Framework includes matters that are not legally required to be included, namely, annual Library Plan; the Low Carbon Strategy, and the Regeneration Business Plan and Strategy.

4.2 It was also presented to the Commission that there were two further Plans which needed to be included in the Policy Framework by law [Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853] namely:

- Children and Young People's Plan (Children and Young People's Plan (England) Regulations 2005); and
- Crime and Disorder Reduction Strategy (Sections 5 and 6 of the Crime and Disorder Act 1998, Licensing Authority Policy Statement [section 349] of Gambling Act the 2005).

Following the Commissions comments at the meeting on 26 September 2018 and subsequent meetings, officers have now completed the revision of the Budget and Policy Framework and a more streamlined Budget and Policy Framework is recommended for approval. This reduces the number of policies to 8 namely:

- Future Libraries MK Plan (Annual Library Plan)
- Safer MK Plan (Crime and Disorder Reduction Strategy)
- Plans and Strategies which together comprise the Development Plan and Development Plan Documents
- Youth Justice Plan
- Licensing Authority Policy Statement - Gambling Statement of Principles
- The Council Plan
- The Local Transport Plan
- Plans which comprise the Children and Young people's Plan

The Budget and Policy Framework will be contained in Chapter 2, the Responsibilities and Functions sections of the draft revised Constitution.

The direction of the Commission on 26 September 2018 that any deleted policies should be brought to the attention of Full Council at the time of recommending the revised Constitution and will be complied accordingly.

4.3 **Local Choice Functions**

These are certain functions of the Council which can be delegated to the Cabinet, a committee or a named officer. The Council has discretion as to how best to organise these matters and they usually form part of a table in the Constitution.

At the meeting on 26 September 2018, it was presented to the Commission that the current table showing responsibilities for local choice functions was not up to date. Additionally, officers also made further recommendations that were considered at the meeting. Officers have now revised the Local Choice Functions table and is recommended for approval.

4.4 Terms of Reference for Committees

At its meeting held on 26 September 2018, the Commission asked the Officer Working Group to review and update the terms of reference for the Council's Committees, Sub Committees and Panels. An update of the terms of reference for the Audit Committee was pending as a result of the Audit Committee's review of its Terms of Reference on 20 November 2018. The terms of reference for the Audit Committee have now been updated.

4.5 Officer Scheme of Delegation and Proper Officer List

The Commission was of the view that the Officer Scheme of Delegation presented at the meeting on 26 September 2018 was too detailed and would be difficult to update if included in the Constitution. At the Commission's meeting on 14 November 2018, the Commission approved the inclusion of a high level reference within the Constitution, with a link, to the Officer Scheme of Delegation and the Proper Officer List. It was agreed that whilst the Officer Scheme of Delegation would sit outside the Constitution, only the Committee Services and Scrutiny Manager, in consultation with the Monitoring Officer would be able to make any amendments to it. The Commission agreed that any amendments would be reported to the Full Council on a quarterly basis.

Officers have now made the high level reference accordingly within Chapter 2 of the of the draft revised Constitution.

In order to adhere to the reporting requirements detailed above, it is recommended that the Commission approves the Officer Scheme of Delegation and the Proper Officer list and that the Commission agrees to recommend the same to full Council in early 2019 when presenting the draft revised Constitution.

5. Outstanding Matters from Phase 2 - Rules of Procedure And Additional Matters

The Council's Rules of Procedure constitute an essential instrument for the smooth operation of the authority. The rules guide the conduct of Council meetings and meetings of its committees and sub-committees. These rules have been prepared in accordance with:

- Schedule 12 of the Local Government Act 1972
- Sections 8 and 20 of the Local Government and Housing Act 1989
- Local Authorities (Standing Orders) Regulations 1993
- Local Government Act 2000 Mandatory Standing Orders

The following procedure rules had outstanding actions from the last meetings:

5.1 Budget and Policy Framework Procedure Rules

The Council will be responsible for the adoption of its Budget and Policy Framework as set out in the Constitution. Once the Budget and Policy Framework is in place, it will be the responsibility of the Cabinet to implement it.

These rules are concerned with the process of developing the Budget and Policy Framework and settling any differences between the Council and the Cabinet on those matters.

The updated Budget and Policy Framework Procedure Rules are included in the draft revised Constitution.

5.2 Access to Information Rules - Procedure for the Determination of Planning Applications – Public Participation

The public speaking rights for the Development Control Committee have been reviewed with engagement with members of the Development Control Committee, Planning Officers, the Constitution Commission and Political Groups. Previously, it was proposed to reduce the speaking rights from 3 minutes to 1 minute. At the meeting on 14 November 2018, the Commission decided that the speaking rights should be reduced from 3 minutes to 2 minutes. The Commission also asked officers to communicate the proposed changes to councillors and any comments received from councillors to be addressed directly to the officers. Officers amended the speaking rights accordingly and issued communications to councillors as recommended. One response was received. The response did not agree to the reduction of speaking time for objectors to two minutes or the removal of the objectors' right to ask two questions before making their speeches. There was also a question surrounding paragraph 10, namely that this was not clear and that the Development Control Committee already has a process which is followed. Officers agreed upon review that paragraph 10 was not clear and this has now been amended to reflect the current arrangements and allow the Chair discretion to make changes.

5.3 Officer Scheme of Delegation for Development Management Matters

This scheme relates to planning matters which are determined by officers rather than at the Development Control Committee.

Councillors proposed various changes to the scheme during the general consultation on the review of the Constitution. Further minor amendments were also proposed by officers following a review of the scheme. . The most significant change is at Part A paragraph 5, this is to allow a request for a planning application to be determined by Development Control Committee or Development Control Panel by giving notice of a “representation”, rather than only an objection as currently drafted.

At the time of writing the report, consultation with councillors and officers has not yet concluded and members of the Constitution Commission will be updated at the meeting on 7 January 2019 of any comments received with a view to approving the scheme subject to any such comments.

5.4 Councillors' Planning Code of Good Conduct

The Councillors' Planning Code of Conduct which is currently in the Constitution is considerably out of date. Officers have undertaken a review and considered examples from other local authorities and have as a result prepared a new Planning Code of Good Conduct. The new document is based on the document "Probity in Planning for Councillors and Officers" by the Local Government Association and the Planning Advisory Service. This new document has also taken elements of the current Code of Conduct.

At the time of writing the report, the consultation with councillors has not yet concluded and members of the Constitution Commission will be updated at the meeting in January 2019 of any comments received with a view to having the Code approved at the meeting taking into account any comments.

5.5 Finance Regulations / Acquisition and Disposal of Land and Buildings Procedure Rules

The Financial Regulations provide the framework and overarching rules for the financial administration of the Council and help ensure the Council has sound financial governance, support us to deliver value for money and minimise the risk of legal challenge. The Acquisition and Disposal of Land and Buildings Procedure Rules set out the rules by which the Council will acquire and dispose of land and matters that should be taken into account including consultation and approvals.

It was considered that there is duplication between the Acquisition and Disposal of Land and Building Rules and the Financial Regulations and at the meeting on 18 October 2018, it was recommended that the Acquisition and Disposal of Land and Building Procedure Rules were deleted. Whilst the Commission agreed to the deletion of the Rules as a stand-alone document within the Constitution, the Commission requested that officers ensure that the Finance Regulations distinctively reflect rules relating to acquisition and disposal of land and buildings and that these are adequately robust. Officers have now undertaken the work and the rules relating to Acquisition and Disposal of Land and Buildings are now distinctively included at Section 19 of the Financial Procedure Rules. The update was made in consultation with Service Director (Finance and Resources). The rules now also reflect matters such as compliance with Section 123 of the Local Government Act 1972; consideration of matters such as application of procurement law to land transactions and clearer provisions relating to approvals.

In addition, the Financial Regulations have slightly been amended in other parts to remove the requirement for approvals from Finance colleagues each time before an invoice can be issued to third parties for services rendered by the Council to clarify matters pertaining to treatment of pensions during tender and in other circumstances, including matters relating to pension bonds; and

to include matters pertaining to state aid and procurement when considering whether to give a grant.

5.6 Officer Employment Procedure Rules

Under s112 of the Local Government Act 1972, the Council is empowered to appoint such officers as it thinks necessary for the proper discharge of its or another authority's functions as agreed to be discharged by them. This part sets out the rules relating to the recruitment, appointment and dismissal of senior staff.

The Officer Employment Procedure Rules required updating to fully meet the requirements of the 1993 and 2001 Standing Orders Regulations as amended and good employment practice, specifically:

- (i) to detail a process to review the Chief Executive and Chief Officer Terms and Conditions of Service;
- (ii) to recognise the need for the Council to establish a non-executive body that would deal with staffing matters, such as an employment committee or similar and which would have the power to suspend the Chief Executive and take disciplinary action against JNC Chief Officers;
- (iii) to recognise the need for the Council to establish a panel of Independent Persons who would form part of the disciplinary process for the dismissal of a statutory officer;
- (iv) the need for the Council to consider the potential dismissal of a statutory officer, including consideration of representations from the Independent Persons;
- (v) to establish an appeal process for disciplinary action against a statutory officer that is unlikely to amount to gross misconduct or that will be unlikely to lead to dismissal; and
- (vi) to establish a process to allow frivolous or vexatious claims or matters that should be dealt with elsewhere to be ruled out.

Furthermore, the number of members of the Investigation and Disciplinary Committee needs to be in political balance with at least one member of the Cabinet (not a majority) being included.

The Terms and Conditions of Service allow for a process to rule out frivolous or vexatious claims or matters that should be dealt with elsewhere. It is suggested that this is undertaken by an officer (the Monitoring Officer unless the allegations are against the Monitoring Officer in which case it is recommended the Head of Paid Service or Deputy Monitoring Officer) in consultation with the chair of the relevant committee/panel.

The committee/panel should also include the power to suspend the Chief Executive – it is assumed that below the level of Chief Executive then the Chief Executive, a Director or Service Director will suspend a relevant Officer. It is also recommended that the committee/panel has the ability to deal with severance on mutually acceptable terms, in line with Council policies.

The revision has now been completed by officers .

5.7 Council, Cabinet and Overview and Scrutiny Procedure Rules

The Council, Cabinet and Overview and Scrutiny Procedure Rules have been updated in accordance with the comments made by the Commission at its last meeting which are detailed as an Annex to the minutes of that meeting.

6. **Officer Code of Conduct**

6.1 The Officer Code of Conduct is currently contained in Part 5 of the Constitution and states the standards of behaviour expected of Council employees. The Code of Conduct for Officers had not been reviewed for a considerable length of time. Colleagues from HR have reviewed and provided an updated Officer Code of Conduct. Consultation with the Corporate Leadership Team has taken place with regard to the updated Officer Code of Conduct.

7. **Protocol on Councillor – Officer Relationships**

7.1 The purpose of the protocol is to provide values and guidelines for relationships between Councillors and Officers. Where the Council has established a protocol in respect of relationships between Councillors and Officers of the Council, it is required, by the Secretary of State's Direction, to be included in its Constitution. The Current protocols on the Councillor - Officer relationship is contained in Part 5 of the Constitution. The protocol was out of date having not been reviewed for a considerable period of time. Officers have now carried out a review taking into account what other local authorities have in place and have provided a revised protocol. The Commission will be updated at its meeting in January 2019 of any comments from the Council's Corporate Leadership Team on these protocols with a view to having the Protocols approved at the meeting.

8. **Future Work and Next Steps**

8.1 Officers will make any necessary amendments to the draft revised Constitution to reflect any comments received from the Commission in January 2019, in order for the revised Constitution being submitted to Council for approval.

8.2 Officers will further review the document to ensure quality and undertake any further necessary tidy up exercise that may be required before it is presented to full Council.

9. Implications

9.1 Policy

Keeping the Council's Constitution up to date and in a user friendly format will support the Council's Corporate Priorities, Vision and Values.

9.2 Resources and Risk

There are no immediate resource implications

	Capital	N	Revenue	N	Accommodation
	IT	Y	Medium Term Plan	N	Asset Management

9.3 Legal

Section 37 of the Local Government Act 2000 sets out the duty of the Council to prepare and keep up to date its constitution as follows:

- “(1) A local authority which are 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.”

9.4 Other Implications

None identified.

N	Equalities/Diversity	N	Sustainability	Y	Human Rights
Y	E-Government	Y	Stakeholders	N	Crime and Disorder

Background Papers:

Milton Keynes Council Advice Note – Summary of Constitutional Review June 2018 Bevan Brittan

Constitution Commission Meeting Report dated 26 September 2018

Constitution Commission Meeting Report dated 18 October 2018

Constitution Commission Meeting Report dated 14 November 2018

Annex:

Draft Revised Constitution (**To follow**)