

Milton Keynes Council – Constitution Review Statutory Compliance Checklist

This compliance checklist sets out the statutory requirements for what must appear (somewhere) in a local authority constitution. It is a useful check to identify any missing areas and also a quick reference point for finding statutory information in the document. It will need to be updated if the format of the Constitution is changed.

Conclusion

Milton Keynes Council's Constitution is broadly compliant and contains the core information required by the statutory provisions. There are a few areas which need to be reviewed and addressed to ensure full compliance and to update references in relation to

- Delegations, including reference to sub-committees (e.g. Licensing and Standards); Proper Officer functions; and joint arrangements, particularly LGSS;
- Legislative updates, for example numerous references to Parts II and III Local Government Act 1972 that was repealed and replaced by Part 1A (section 9 et. Seq. and schedule A1 Local Government Act 2000); and the Accounts and Audit Regulations 2015 and the Openness Regulations 2014 (although the provisions are helpfully mentioned of the Council's Notice of Meetings along with information around complaints, compliments and comments);
- References to out of date plans and strategies e.g. Corporate Plan 2012-16; and
- The Leader's power to change the executive arrangements at any time pursuant to section 9E Local Government Act 2000.

We suggest these are addressed as any new Constitution is developed and finalised.

STATUTORY REQUIREMENTS

1 THE LOCAL GOVERNMENT ACT 2000 (CONSTITUTIONS) (ENGLAND) DIRECTION 2000

The Secretary of State for the Environment, Transport and the Regions, in the exercise of his powers under sections 37(1)(a) [now s.9P] and 48(7) [now s.9R] of the Local Government Act 2000 (c.22) (the Act) and all other powers enabling him in that behalf, hereby directs all local authorities in England to which Part II of the Act applies as follows:

Miscellaneous and interpretation

In the direction:

"constitution" has the meaning given by section 37(1) [now 9P] of the Act,

"overview and scrutiny committee" ...in the case of a local authority which is operating executive arrangements has the meaning given by section 21(1) [now s.9F(1)] of the Act

In complying with this direction a local authority must have regard to any guidance issued for the time being by the Secretary of State under section 38 [now s.9Q] of the Act.

The Constitution.

The constitution prepared and kept up to date in accordance with section 37(1) [now s.9P] of the Act by a local authority which is operating executive arrangements or, as the case may be, alternative arrangements must include:

	Requirement of Direction	Council's Constitution	Comment
a	a summary and explanation of the purpose and content of the constitution;	Contents Part 1 Part 2 – Article 1	We note that the Contents page provides a useful overall picture of the composition of the Constitution. The Summary and Explanation provides useful detail as to the content of the Constitution, but it could be made more user friendly. For example, the "What's in the Constitution" paragraph refers only to the contents of the Articles and not the constitution as a whole and this list reflects the contents pages rather than describing the key elements of each part. It also uses terms such as "Joint Arrangements" which are likely to mean little to members of the public without further explanation. We note that the "Purpose of the Constitution" as set out in Part 2 – Article 1 is based on the Model Constitution, and we consider that this would benefit from being redrafted to reflect how a modern Council operates (e.g. does the constitution provide leadership or is that the Leader and Cabinet?).
b	a description of the composition of the Council, the scheme of ordinary elections for members of the council and their terms of office;	Part 1 Part 2 – Article 2	There is repetition between Part 1 and Articles 2 and 3. We would recommend that this information (elections, terms of office, who can vote, composition of the Council) is consolidated into one place. The political composition of the Council from time to time does not need to be in the Constitution, but it may be helpful if there was a hyperlink to general members/elections pages on the Council's website to make it easier to keep up to date after elections and by-

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c	<p>a description of the principal roles and functions of the members of the council under executive arrangements or, as the case may be, alternative arrangements including the rights and duties of those members;</p>	<p>Part 1 Part 2 – Articles 2, 4, 7 and 12 and Schedule 1 Part 3 – Leader's executive Scheme of Delegation Part 4 – Cabinet Procedure rules</p>	<p>elections. Part 1 states "The Cabinet is made up of the Leader, who is elected by the Council, and up to 9 other Councillors, also elected by the Council", which is not correct. Under S.9C of the Local Government Act 2000 the members of the Executive must be appointed by the Leader. Article 4, paragraph 4.2 is incorrect for the same reason. Article 7.2 is correct – that the Leader appoints members of the Cabinet. As a whole and the Constitution meets the requirements of the Direction. However, we note that the information is diffuse within the Constitution, and would benefit from consolidation and more effective cross referencing.</p>
d	<p>the scheme of allowances for members of the authority drawn up in accordance with regulations made under section 18 of the Local Government and Housing Act 1989 (c.42);</p>	<p>Part 6</p>	
e	<p>a description of the rights and responsibilities of inhabitants of the authority's area including:</p> <ul style="list-style-type: none"> i. their rights to vote in elections for the return of members of the authority; ii. their rights to access to information about the authority's activities; iii. their rights of access to meetings of the council, its committees and sub-committees and any joint committees established with any other authority; and iv. their rights of access to meetings of the executive and committees of the executive, 	<p>Part 1 Part 2 – Article 3 Part 4 – Council Procedure Rules Part 4 – Access to Information Procedure Rules Part 4 – Cabinet Procedure Rules</p>	<p>We would expect to see reference to the ability for the public to access meetings and to film, record and transmit information. We note that the Council does not appear to have a guide for members of the public wishing to access and/or speak at meetings other than in respect of Planning and Licensing (though there is reference in the Council Procedure Rules to the ability to ask questions and participate with the consent of the meeting, the Chair of the meeting having asked at the beginning if any member of the public would like to speak (Rule 9.11)). Reference to any Unreasonable Behaviour Policy (or similar) would also be useful. Contact details would be useful e.g. to meetings@milton-keynes.gov.uk with telephone contact details etc. and various forms. Article 3.1(b) states that members of the public may attend meetings of Cabinet where a decision is being taken. This</p>

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f	<p>a description of the roles of the authority itself under executive arrangements (or, as the case may be, alternative arrangements) including:</p> <ul style="list-style-type: none"> i. the functions which may be exercised only by the authority itself or which may to some extent be exercised only by the authority itself (including, in the case of a local authority operating executive arrangements any plans and strategies which are subject to approval or adoption by the authority itself by virtue of regulation 5 of, and paragraph 1 of Schedule 4 to, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I.2000/2853)); and ii. any rules governing the conduct and proceedings of meetings of the authority itself whether specified in the authority's standing orders or otherwise; 	<p>Part 1 Part 2 – Articles 2, 4 & 7 Part 3 – Responsibility for Functions paragraphs 1-3 Part 4– Council Procedure Rules Part 4- Budget and policy framework procedure rules Part 4 – Access to Information Procedure Rules Part 4– Overview and Scrutiny Procedure Rules</p>	<p>There is an inconsistency in who can take decisions in respect of Local Choice functions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853). Article 14.3a states that the list of Functions in Article 4.2 shall only be taken by full Council. That list includes Local Choice functions which have been allocated to the Council. This is not consistent with Part 3 Responsibility for Functions, Part B paragraph 2. The Table in that paragraph delegates some decisions to committees of the Council. Some of the functions are not clear, including who appoints to outside bodies.</p> <p>Article 4, 4.1 (a) the Policy Framework should be reviewed and updated in line with the Council's current requirements.</p> <p>Article 4, 4.1 (c) reference to Housing Land Transfer requirements for a resolution of Council under the 1993 Act have been repealed – remove.</p>
g	<p>a description of the roles and functions of the chairman of the council (including a chairman entitled to the style of mayor);</p>	<p>Part 2 – Article 5 Part 4(1) – Council Procedure Rules</p>	<p>The Deputy Mayor is "appointed" not elected under the Local Government Act 1972 Article 5 contains useful information which we suggest could be moved to the Summary and Explanation.</p>
h	<p>a description of the functions of the local authority executive which, for the time being, are exercisable by individual members of the local authority executive stating as respects each function, the name of the</p>	<p>Part 2 – Article 7 Part 3 – Leader's Executive Scheme of Delegation Part 4- Budget and policy</p>	<p>The Constitution includes detailed delegations to Cabinet Members, who are able to take Key Decisions within their respective areas. We note that all non-key decisions may be taken by</p>

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	<p>member by whom it is exercisable;</p>	<p>framework procedure rules. Part 4 – Financial Regulations and Procedures Part 4 – Contracts Procedure Rules</p>	<p>Officers (Leader's Scheme of Delegation, paragraph 15), but that this is subject to a requirement to consult Cabinet Members on sensitive matters. Does this process work well in practice?</p>
i	<p>a description of the functions of the local authority executive which, for the time being, are exercisable by the executive collectively or a committee of the executive, stating as respects each function, the membership of the body by which it is exercisable;</p>	<p>Part 2 – Article 7 Part 3 paragraphs 2 (local choice functions) and 3 (Responsibilities of the Executive) Part 4 – Access to Information Procedure Rules Part 4 – Cabinet Procedure Rules Part 4 - Budget and Policy Framework Procedure Rules Part 4 – Financial Regulations and Procedures Part 4 – Contracts Procedure Rules</p>	<p>We understand that there are no cabinet committees, at present, however there is the ability for the Leader and Cabinet to form them from time to time.</p> <p>The summary in Schedule 1 of Part 2 would sit more naturally in the Responsibility for Functions section together with Part 2 – Article 7 and Part 3, paragraph 3.</p>
j	<p>a description of those powers of the executive which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months;</p>	<p>Part 2 - Article 13 Officers Part 3– Scheme of Delegation Part 4 - Budget and Policy Framework Procedure Rules Part 4 – Financial Regulations and Procedures Part 4 – Contracts Procedure Rules</p>	<p>Article 13 sets out clearly the responsibilities for:</p> <ul style="list-style-type: none"> - Chief Executive, MO, CFO, AD Democratic Services, Director of Children's Services, Director of Adult Services. <p>The Scheme of Delegation could be more full and clearer as to when decisions are taken by members and when decisions are taken by officers.</p> <p>We note that all non-key decisions may be taken by Officers (Leader's Scheme of Delegation, paragraph 15), but that this is subject to a requirement to consult Cabinet Members on sensitive matters. Rules on sub-delegation by officers should be included.</p> <p>(N.B. there are powers for the Chief Executive to take any key executive decision to cater for "urgency, efficiency or cost".)</p> <p>Paragraph 3. refers to the allocation of Council functions to the cabinet (– as stated above the Executive Scheme of delegation vests in the Leader by operation of Law as the senior executive member); and an executive scheme of delegation approved by the Council on 6 June 2006 as amended from time to time; this should be approved by the</p>

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k	<p>a description of the arrangements for the operation of overview and scrutiny committees including</p> <ol style="list-style-type: none"> i. the terms of reference and membership of those committees and any rules governing the exercise of their functions; and ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise' 	<p>Part 1 Part 2 – Article 6 (which includes the TOR's) Part 4 – Access to Information Procedure Rules Part 4(5) – Overview and Scrutiny Procedure Rules</p>	<p>Leader not Council and it ought to be updated.</p> <p>Part 1 states that there are 9 overview and scrutiny committees, but only 6 are listed in Article 6. However, the Council's website states: "<i>There are three Scrutiny Committees and a Management Committee which support the work of the Cabinet and the Council as a whole.</i>"</p> <p>The number of members of each committee is not specified within the Constitution, nor the Quorum.</p> <p>We assume that the committees are currently politically balanced; however, this is not explicitly reflected in the Constitution.</p>
l	<p>in the case of a local authority which is operating executive arrangements, a description of the roles of the executive, committees of the executive and members of the executive including:</p> <ol style="list-style-type: none"> i. the roles, functions, rights, responsibilities and duties of members of the executive; ii. in the case of a local authority which is operating executive arrangements which include a leader and cabinet form of executive, any rules governing the election of the executive leader; iii. any rules governing the appointment of members of the executive; iv. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of the executive; v. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of any committees of the executive; vi. any provisions in the local authority's executive arrangements with respect to the appointment of committees of the executive; and 	<p>Part 2 – Article 7 Part 2 – Schedule 1 Part 3 paragraphs 2 (local choice functions) and 3 (Responsibilities of the Executive) Part 4 – Access to Information Procedure Rules Part 4 – Council Procedure Rules Part 4 – Cabinet Procedure Rules; Quorum of Cabinet is 3</p>	<p>The Leader is elected by simple majority of full Council and is elected for a four year term – Article 7.3 and CPR Rule 1.1. consistent with Schedule A1 Local Government Act 2000.</p> <p>Part 1 states "<i>The Cabinet is made up of the Leader, who is elected by the Council, and up to 9 other Councillors, also elected by the Council</i>", which is not correct. Under S.9C of the Local Government Act 2000 the members of the Executive must be appointed by the Leader. Article 4, paragraph 4.2 is incorrect for the same reason. Article 7.2 is correct.</p> <p>Reference to the suspension of Members under Part III of the LGA 2000 should be removed from Part 2 Article 7 as it has been repealed. This could be replaced by reference to disqualification under s.80 of the Local Government Act 1972.</p>

	Requirement of Direction	Council's Constitution	Comment
	vii. N/A (Mayor and Council Manager option – now repealed)		
m	N/A (Mayor and Council Manager option – now repealed)	N/A	
n	<p>a description of the roles of any committees or sub-committees appointed by the authority in accordance with section 101 of the Local Government Act 1972 (c.70) including:</p> <ul style="list-style-type: none"> i. the membership, terms of reference and functions of such committees or sub-committees; and ii. any rules governing the conduct and proceedings of meetings of those committees or sub-committees whether specified in the authority's standing orders or otherwise, 	<p>Part 1 Part 2 – Articles 6, 8, 9, 10, 11, 12 Part 3, paragraph 1 Part 4 – Council Procedure Rules Part 4 – Access to Information Procedure Rules Part 4 – Overview and Scrutiny Procedure Rules</p>	<p>Committee Terms of Reference are largely included in a table in Paragraph 1 of Part 3.</p> <p>The Council does not appear to have a non-executive Employment/HR/Personnel Committee or similar – see below – to deal with appointments, suspension and disciplinary action of the HPS/MO/CFO (and potentially Chief Officers and Deputy Chief Officers) and an Independent Panel for disciplinary action that could result in the dismissal of one of those three statutory officers (see further below).</p> <p>We note that no functions are listed for the Standards Committee, as these are included instead in Article 9. We suggest these are consolidated into one place.</p> <p>The Standards Sub-Committees terms of Reference and quorum are not set out (but an Appeals and Hearing Sub-Committees are referred to). Co-optees shall be non-voting.</p> <p>Nor is there any reference to the Licensing Sub-Committee as required in the statutory guidance see below and Appendix 1.</p> <p>We note that the Constitution does not include specific procedure rules for the Planning and Licensing Committees – this is not essential.</p>
o	a description of those powers of the council which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable,	<p>Part 2 - Article 13 – Officers Part 2 - Article 14 – Decision-making Part 2 - Article 15 – Finance,</p>	<p>See below re Local Auditor Panel – if required.</p> <p>Part 3 includes a detailed "Annex" setting out authorisations to officers in respect of development control.</p> <p>We note that the Licensing Committee also delegates functions of officers under a scheme of delegation dated 14</p>

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	<p>other than any power exercisable by the officer for a specified period not exceeding six months;</p>	<p>Contracts and Legal matters Part 3 – Scheme of Delegation</p>	<p>January 2004. This is not included in the constitution (we would suggest it should be included), and it is also 14 years old and is likely to be in need of updating. See the statutory Guidance extract below re licensing and officer delegations. Ideally all of the delegations should be updated as a result of re-structurings. We would normally expect to see a list of Proper Officer functions under various legislative provisions set out in the constitution alongside more general delegations and principles allowing the sub-delegation of functions by officers.</p>
p	<p>a description of the roles of the local authority's Standards Committee and any parish council sub-committee of the Standards Committee appointed in accordance with sections 53 or 55 of the Act including:</p> <ul style="list-style-type: none"> i. the membership, terms of reference and functions of that committee or sub-committee; and ii. any rules governing the conduct and proceedings of meetings of that committee or sub-committee whether specified in the authority's standing orders or otherwise; 	<p>Article 9 – Standards Committee Article 12 – Audit Committee Part 4 – Access to Information Procedure Rules Part 5 – Members' Code of Conduct Part 5 – Protocol on Member /Officer Relations</p>	<p>The Council's Standards Committee Terms of Reference are included – not sub-committees – they should be included. The Councils "arrangements" for dealing with standards matters (including procedures) should be hyperlinked or included. The Council's and the Cabinet's Procedure Rules should require members to leave the meeting room when any member declares a disclosable Pecuniary Interest (DPI) section 31(10) Localism Act 2011 (subject to dispensations). The Constitution recognises that more than one Independent Person will be required to be consulted through an appointed Panel before the dismissal of one of the three statutory officers (Officer Employment Procedure Rules) and a decision of full Council.</p>
q	<p>a description of the roles of any area committees appointed by the authority to exercise functions in accordance with regulations 16A of the Local Government (Committees and Political Groups) Regulations 1990 (SI 1990/1553) or, as the case may be, section 18 of the Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (SI 2000/2851) including:</p> <ul style="list-style-type: none"> i. the membership, terms of reference and functions of such committees; and 	<p>Part 1 Part 2 – Article 10 – Area Consultative Forums Part 2 – Article 11 – Joint Arrangements</p>	<p>The Constitution makes reference to Area Consultative Forums and their role. They are described as being advisory only.</p>

	Requirement of Direction	Council's Constitution	Comment
r	<p>ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise</p> <p>a description of any joint arrangements made with any other local authorities under section 101(5) of the Local Government Act 1972 including:</p> <ul style="list-style-type: none"> i. the terms of those arrangements; ii. the membership, terms of reference and functions of any joint committees established under those arrangements; and iii. any rules governing the conduct and proceedings of meetings of those joint committees whether specified in the authority's standing orders or otherwise 	<p>Part 2 – Article 11 – Joint Arrangements</p>	<p>The Joint Arrangements section does not refer to LGSS. LGSS is only mentioned once in parts 1, 2 and 3 of the Constitution. It is not clear how the officer's functions and delegations in Article 13 and Part 3 reflect the fact that the Council has put joint arrangements in place for a number of support functions, and for Revenue and Benefits. We understand that financial delegations to Officers in LGSS have recently been approved, but not necessarily other support functions. What other Joint Arrangements are in place with the Council? Is there a Regulation 10 Joint Committee with the CCG or otherwise?</p>
s	<p>a description of any arrangements made with another local authority for the discharge of functions by that other local authority or the executive of that other local authority in accordance with section 101(1)(b) of the Local Government Act 1972 or, as the case may be, Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 – [now 2012 Regulations];</p>	<p>Part 2 – Article 11 – Joint Arrangements</p>	<p>AS above – LGSS is a mixed function joint arrangement.</p>
t	<p>a description of the roles of officers of the local authority including:</p> <ul style="list-style-type: none"> i. the management structure for officers of the authority; ii. any arrangements made under section 101 of the Local Government Act 1972 or, as the case may be, section 14, 15 or 16 [now 9E, 9A & 9B] of the Act for the discharge of functions by officers of the authority; iii. the roles and functions of the head of paid service, monitoring officer and chief finance officer; iv. the code of conduct for local government employees issued by the Secretary of State in accordance with section 82 of the Act; v. any rules governing the recruitment, appointment, 	<p>Part 7- Management Structure Part 2 - Article 13 – Officers Part 2 - Article 14 – Decision-making Part 2 - Article 15 – Finance, Contracts and Legal matters Part 3– Scheme of Delegation Part 4 – Officer Employment Procedure Rules Part 5 –Officer Code of Conduct Part 5 – Protocol on Member/Officer Relations</p>	<p>Whilst Article13 sets out the main functions of some of the Council's Senior Officers, there are no rules (except in the case of development control) which provide for what officers are authorised to do, and what restrictions there are on further delegations, keeping written records of delegations, appointment of deputies, sub-delegation etc.</p> <p>As we comment on above, there should be more detail included as to how the relationship with LGSS works and what functions have been delegated to the joint committee and officers.</p> <p>There is no proper officer register within the Constitution.</p>

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u	<p>dismissal and disciplinary action for officers of the authority;</p> <p>vi. any protocol established by the authority in respect of relationships between members of the authority and officers of the authority;</p> <p>a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to meetings of the authority, committees and sub-committees of the authority, joint committees established with any other local authority, the executive and committees of the executive</p>	<p>Part 1</p> <p>Part 4 – Access to Information Procedure Rules</p> <p>Part 4 – Cabinet Procedure Rules</p>	<p>The Officer Employment Procedure Rules do not reflect the full requirements under the Standing Orders Regulations 2001 as amended by the 2015 Regulations and the 1993 Standing Order Regulations.</p> <p>Part 1 includes the wording: <i>"Citizens have a right to ... see reports and background papers, and any record of decisions made by the Council, the Cabinet, individual Cabinet Members, or officers when taking 'Key Decisions'</i> This is misleading, as public access to confidential and exempt reports and background papers is restricted.</p> <p>A protocol or Guidance note for the public on accessing meetings would be useful to summarise their rights or give more information and contact details in a revised Summary and Explanation.</p> <p>We note, however, that the provisions of the Openness Regulations 2014 are helpfully mentioned of the Council's Notice of Meetings along with information around complaints, compliments and comments.</p> <p>The arrangements for public speaking at planning and licensing committees are unclear.</p>
v	<p>a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to information about the decisions made or to be made by in respect of local authority's functions and activities.</p>	<p>Part 4 – Council Procedure Rules</p> <p>Part 4 – Access to Information Procedure Rules</p>	<p>The arrangements for public speaking at planning and licensing committees are unclear.</p>
w	<p>a register stating</p> <p>i. the name and address of every member of the local authority executive for the time being and the ward or division (if any) which he represents; and</p> <p>ii. the name of every member of each committee of the local authority's executive for the time being.</p>	<p>Part 3 – Executive Scheme of Delegation</p>	<p>We would expect a hyperlink to the Councillor details pages on the Council's website.</p>
x	<p>a description of the rules and procedures for the management of its financial, contractual and legal affairs including:</p> <p>i. procedures for auditing of the local authority;</p>	<p>Part 2 – Article 12</p> <p>Part 2 – Article 14</p> <p>Part 2 – Article 15</p> <p>Part 3</p>	<p>We consider that the Financial Procedure rules can be shortened, and that repetition between the various parts of the Constitution which deal with financial matters can be reduced whilst still complying with the Direction.</p>

	Requirement of Direction	Council's Constitution	Comment
	<p>ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise;</p> <p>iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and</p> <p>iv. rules and procedures in respect of legal proceedings brought by and against the local authority</p>	<p>Part 4 - Budget and Policy Framework Procedure Rules</p> <p>Part 4 – Financial Regulations and Procedures</p> <p>Part 4 – Contracts Procedure Rules</p>	<p>Audit arrangements could be described in Part 1. Has the Council participated in PSAA Ltd re the appointment of external auditors? If not, the Council needs to have a "Local Audit Panel" as required by the 2014 Act – see further below.</p> <p>The Assistant Director Legal Services is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Assistant Director Legal Services considers that such action is necessary to protect the Council's interests.</p> <p>The Planning scheme of delegation contains specific delegations to the Director of Regeneration to take enforcement action, but the constitution does not include similar provisions for licensing, fraud, trading standards etc. Is action in these areas always approved by the Assistant Director Legal Services?</p> <p>Powers to conduct, manage, compromise or settle legal proceedings should be strengthened – Article 15 is inadequate in this regard.</p>
y	<p>a description of the register of interests of members and co-opted members of the authority required under section 81 of the Act [now s29 Localism Act 2011], together with the procedures for publicising, maintaining and updating that register.</p>	<p>Part 5 – Member Code of Conduct;</p>	<p>Members are responsible under this section for notifying the Monitoring Officer, who is required to keep the register up to date – the register should be available on the Council's website.</p>
x	<p>a description of the rules and procedures for review and revision of the authority's constitution and executive arrangements or, as the case may be, alternative arrangements</p>	<p>Part 2 – Article 17</p> <p>Part 3 Section 8 Audit Committee</p> <p>Part 3 Section 10 (Council Business Committee)</p> <p>Part 5</p>	<p>Under Article 17 changes to the Constitution must be approved by the full Council.</p> <p>The Monitoring Officer's powers to update the Constitution are limited to:</p> <ol style="list-style-type: none"> a) Ensuring job titles of officers and management structures are up to date b) Making other consequential amendments to reflect

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			<p>Council decisions and to ensure that the Constitution remains a contemporary document, provided that no changes undertaken by the Service Director will take effect until they have been agreed by the Council.</p> <p>These powers should ensure that the Constitution can be kept reasonably up to date without having to regularly take it all back to Full Council. However, more should be delegated to the Monitoring Officer for example, changes required by legislation, changes to posts and responsibilities and minor changes to improve drafting etc. Council should not have to approve/ deal with the minutiae.</p> <p>Also in relation to Executive functions the Leader has the power to make changes at any time and should have an obligation to notify such changes to the Monitoring Officer/Democratic Services (s9 Local Government Act 2000).</p>

2 OTHER LEGISLATIVE REQUIREMENTS

2.1 In addition to the requirements under the Direction, there are a number of other legislative requirements specifying content of local authority constitutions:

	Legislative Requirements	Council's Constitution	Comment
<p>a</p> <p>Openness of Local Government Bodies Regulations 2014 (SI 2014/2095):</p> <p>where a member of the public is entitled to attend a meeting of the Council, or of any of its Committees or Sub-Committees, Cabinet or a Committee of Cabinet, that person may also "report on the meeting", by which it means –</p> <p>2.1.1 Filming, photographing or making an audio recording of the meeting;</p> <p>2.1.2 Relaying that video or audio recording to enable others not present at the meeting to see or hear it at the same time as the meeting; and</p> <p>2.1.3 Reporting or providing oral or written commentary on the meeting, so that others not present at the meeting may hear it at the same time as the meeting. However, authorities are given a discretion not to allow a person to make an oral report or commentary if he/she is actually present at the meeting (presumably to avoid disruption of the meeting).</p> <p>The Regulations place a duty on the authority to afford reasonable facilities for the person to so record and report the meeting.</p>	<p>Council Notices, but not reflected in the Constitution?</p>	<p>The public's rights to film, photograph or audio-record meeting is enshrined the Access to Information Procedure Rules</p> <p>There is no mention in Part 1 Summary and Explanation, Part 2 – Article 3 of these rights nor in Part 4(2) – Access to Information Procedure Rules</p> <p>We would suggest that reference is added</p>	
<p>b</p> <p>Local Government (Executive Arrangements) Meetings and Access to Information (England) Regulations 2012/2089:</p> <ul style="list-style-type: none"> • Regulation 9 of the 2012 regulations introduced the need for 	<p>Article 14 – Decision Making Part 4(2) – Access to Information Procedure Rules Part 4(7) – Urgent Business</p>	<p>The Council has retained the term "Forward Plan". Whilst no longer a legislative requirement, it does assist in ensuring compliance with the requirements of the 2012 Regulations.</p>	

Legislative Requirements	Council's Constitution	Comment
<p>28 days' clear notice for the subject matter of executive and key decisions to appear on the authority's website and be available for public inspection at the local authority's office.</p> <ul style="list-style-type: none"> Regulation 10(1) allows, that if it is impracticable for the Council to give the required 28 days' notice, the decision may still be made if the Chairman of the Scrutiny Committee has been given notice in writing of the matter about which the decision is to be made, a copy of the notice is made available for inspection by the public and is published on the Council's website, and at least 5 clear days have elapsed following the day on which the notice is made available for inspection by the public. Exceptions and special urgency provisions allow shorter notice with the agreement of the Chair of Scrutiny/Mayor or Deputy 	<p>Procedure Rules</p>	<p>.</p>
<p>c</p> <p>Local Audit Panel arrangements required by the Local Audit and Accountability Act 2014:</p> <ul style="list-style-type: none"> The Audit Commission wound up in March 2015 and any references to the Audit Commission should be removed. Public Sector Audit Appointments Limited (PSAA) took responsibility for making auditor appointments and setting audit fees from 2017. Local authorities must appoint an auditor for 2017/18 by December 2016 in accordance with Part 3 of the 2014 Act (and Schedule 3). Section 9 of the Act requires the Council to have an auditor panel to advise the authority on a) the maintenance of an independent relationship with the appointed local auditor, b) the selection and appointment of a local auditor, c) any proposal to enter into an agreement limiting the liability of its auditor(s) – unless the Council joined PSAA. The advice of an auditor panel must be published 	<p>Part 3(8) Audit Committee</p>	<p>The Terms of Reference for the Audit, Committee should make it clear that it is Public Sector Audit Appointments Limited that appoints the Auditor if the Council joined PSAA. If so this should be mentioned in the joint arrangements section.</p> <p>If it has not joined PSAA then the Council needs to create an auditor panel perhaps under the remit of the Audit Committee.</p> <p>Article 12 retains reference to the Audit Commission, which should be removed and requires to be updated to refer to the arrangements required by the 2014 Act. The Members' Planning Code of Good Practice also retains reference to the Audit Commission.</p> <p>Also, please see below in respect of the Accounts and Audit Regulations 2015.</p> <p>We consider that the Financial Regulations require a general review and update to bring</p>
<p>d</p> <p>The Accounts and Audit Regulations 2015 requirements:</p>	<p>Part 1 Part 2 Article 12 – Audit</p>	<p>Also, please see below in respect of the Accounts and Audit Regulations 2015.</p> <p>We consider that the Financial Regulations require a general review and update to bring</p>

Legislative Requirements	Council's Constitution	Comment
<ul style="list-style-type: none"> The responsible financial officer must certify the presentation of the accounts The annual accounts (including the governance statement) must be published with the audit opinion and certificate, and before that must have been approved by members, by no later than 31st July. The responsible financial officer must re-certify the presentation of the annual accounts before member approval is given. The responsible financial officer must ensure that the period for the exercise of public rights includes the first 10 working days of July for reporting on financial years 2015/16 and 2016/17. Public rights (which will include rights of objection, inspection and questioning of the external auditor) may only be exercised within a 30 day period. During this period all relevant documents must be available for public inspection. Documents relating to the published statement of accounts must remain available for public access for a period of not less than 5 years. A narrative statement must be prepared to support the statement of accounts. 	<p>Committee. Part 5 – Financial Procedure Rules</p>	<p>them into line with the requirements of the Accounts and Audit Regulations 2015.</p> <p>The requirement for the Corporate Director – Resources (CD-R) to certify matters could be made more explicit. It is currently included in paragraph 10.5(d) as a responsibility to "certify all financial returns".</p> <p>More detail should be included as to how the roles of the Corporate Director Resources and the Chief Financial Officer relate to the arrangements the Council has in place with LGSS for Finance, Internal Audit and Risk.</p>
<p>e</p> <p>The Local Authorities (Standing Orders) (England) Regulations 2001 as amended by The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015</p> <ul style="list-style-type: none"> requires the any allegation of misconduct against senior officers with statutory responsibilities (Head of Paid Service, Monitoring Officer and s151 Officer) to be considered by an independent panel where a recommendation to Council is likely to be made to Council for dismissal. the panel is to be an advisory committee of the authority requires certain specific standing orders to be added to the Council's constitution. <p>The CE and CO Terms and Conditions of Service have been updated in 2016 and 2017 and are not reflected in the Council's Officer Employment Procedure Rules.</p>	<p>Part 4(6) – Officer Employment Procedure Rules</p> <p>Part 5 – Officer Employment Procedure Rules</p>	<p>The Council does not appear to have a non-executive Employment/HR/Personnel Committee or similar – see below – to deal with appointments, suspension and disciplinary action of the HPS/MO/CFO (and potentially Chief Officers and Deputy Chief Officers).</p> <p>We consider that there should also be a Panel of Independent Persons referred to in the Standing Orders Regulations and the Terms and Conditions of Service appointed by the Council under s102(4) of the LGA 1972, and Terms of Reference should be included for an "Independent Persons Panel" to comply with the</p>

	Legislative Requirements	Council's Constitution	Comment
			<p>requirements of the legislation. As mentioned above it would be helpful for the Council to have more than one Independent Person (potentially 3) should a Panel of 2 need to be convened for these purposes (though individuals may be invited from neighbouring areas)</p> <p>We believe the Independent Persons Panel may meet concurrently with the Panel where a statutory officer faces disciplinary allegations that could lead to dismissal, on a case by case basis.</p>
F	Political Assistant Standing Orders required by section 9 Local Government and Housing Act 1989.		We believe the mandatory standing orders should include reference to political assistant provisions, whether the Council has them or not and so they should be included.
g	Statutory Guidance on the constitution of the Licensing Committee and sub-committees under s.182 Licensing Act 2003, with appropriate decisions delegated to Officers and appeals.	Part 3 – Responsibility for Functions, paragraph 1 – Committee Terms of Reference	<p>The latest statutory guidance was issued in April 2017. We assume that the updated guidance will be taken into account in any re-write of the constitution. We append a copy of the guidance at Appendix 1 to this Checklist.</p> <p>We understand that a scheme of delegation was put in place in 2004. We suggest that an updated version of this should be included in the Constitution.</p>



Home Office

Revised Guidance issued under section 182 of the Licensing Act 2003

April 2017

Administration, exercise and delegation of functions

- 14.61 The 2003 Act provides that the functions of the licensing authority (including its determinations) are to be taken or carried out by its licensing committee (except those relating to the making of a statement of licensing policy or where another of its committees has the matter referred to it). The licensing committee may delegate these functions to sub-committees or in appropriate cases, to officials supporting the licensing authority. Where licensing functions are not automatically transferred to licensing committees, the functions must be carried out by the licensing authority as a whole and not by its executive. Statements of licensing policy should indicate how the licensing authority intends to approach its various functions. Many of the decisions and functions will be purely administrative in nature and statements of licensing policy should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness.
- 14.62 The 2003 Act does not prevent the development by a licensing authority of collective working practices with other parts of the local authority or other licensing authorities for work of a purely administrative nature, e.g. mail-outs. In addition, such administrative tasks may be contracted out to private businesses. But any matters regarding licensing decisions must be carried out by the licensing committee, its sub-committees or officers.
- 14.63 Where, under the provisions of the 2003 Act, there are no relevant representations on an application for the grant of a premises licence or club premises certificate or police objection to an application for a personal licence or to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers in order to speed matters through the system. Licensing committees should receive regular reports on decisions made by officers so that they maintain an overview of the general situation. Although essentially a matter for licensing authorities to determine themselves, it is recommended that delegation should be approached in the following way:

Table: Recommended Delegation of Functions

Matters to be dealt with	Sub Committee	Officers
Application for personal licence	If a police objection	If no objection made
Application for personal licence with unspent convictions	All cases	
Application for premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application for provisional statement	If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor	If a police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a police objection	All other cases
Applications for interim authorities	If a police objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a representation is irrelevant frivolous vexatious etc.		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of an objection to a temporary event notice	All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition	If a police objection	All other cases
Decision whether to consult other responsible authorities on minor variation application		All cases
Determination of minor variation application		All cases