

**Title of Report:**

## **Changes to the Constitution - Parts 2 (Articles of the Constitution), 4 (Council Rules of Procedure), 11 (Contract Rules of Procedure) and 12 (Personnel Rules of Procedure)**

**Report to be considered by:**

Council on 19 May 2015

**Forward Plan Ref:**

C2969

### **Purpose of Report:**

To review and amend Parts 2 (Articles of the Constitution), 4 (Council Rules of Procedure), 11 (Contract Rules of Procedure) and 12 (Personnel Rules of Procedure) in light of legislative changes, policy changes and recent government guidance.

### **Recommended Action:**

1. To consider and agree the proposed amendments and discuss any additional changes required.
2. Authority be delegated to the Monitoring Officer to amend Appendix A to Parts 5 (Executive Rules of Procedure), 6 (Overview and Scrutiny Rules of Procedure) and 7 (Regulatory and Other Committees Rules of Procedure) in line with any changes agreed to Appendix A to Part 4 of the Constitution.
3. Authority to be delegated to the Monitoring Officer to make any additional amendments to the Constitution arising from the enactment of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
4. To agree that the changes will come into effect on the 20 May 2015.

**Reason for decision to be taken:**

To ensure that the Council has adjusted the scheme in light of legislative and policy changes.

Changes are required to implement consequential effects of the Public Contract Regulations 2015 which came into force on the 26th February 2015.

Changes are required to implement consequential effects of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

To consider a request from Members to decrease the time frame for submitting questions to Council where the

questions pertained to an item on the agenda.

**Other options considered:** Not to agree the changes.

**Key background documentation:** Previous versions of Parts 2, 4, 11 and 12 Of the Constitution

**Published Works:** Public Contracts Regulations 2015  
The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

The proposals will help achieve the following Council Strategy principles:

☒ **CSP7 - Empowering people and communities**

☒ **CSP8 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy principles by:

Ensuring that the Constitution is up to date

#### **2014/15 Governance and Audit Committee Chairman**

**Name & Telephone No.:** Councillor Quentin Webb – Tel (01635) 202646

**E-mail Address:** qwebb@westberks.gov.uk

**Date Portfolio Member agreed report:** 8 May 2015

#### **Contact Officer Details**

**Name:** David Holling

**Job Title:** Head of Legal Services and Monitoring Officer

**Tel. No.:** 01635 519422

**E-mail Address:** dholling@westberks.gov.uk

#### **Implications**

**Policy:** Will require changes to Parts 2, 4, 11 and 12 of the Constitution

**Financial:** S151 Officer at the Finance, Audit & Governance Group approved the amendments to Part 11 of the Constitution

**Personnel:** Changes are required to comply with new legislation.

**Legal/Procurement:** Changes are required to take into account and comply with new legislation and to improve working practices in particular the Public Contract Regulations and The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015.

**Property:** None

**Risk Management:** None

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
1. Is it likely to affect people with particular protected characteristics differently?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Is it a major policy, significantly affecting how functions are delivered?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Will the policy have a significant impact on how other organisations operate in terms of equality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Does the policy relate to an area with known inequalities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	<input type="checkbox"/>
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	<input type="checkbox"/>
Item is Urgent Key Decision	<input type="checkbox"/>	<input type="checkbox"/>
Report is to note only	<input type="checkbox"/>	<input type="checkbox"/>

# Executive Report

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## 1. Introduction

- 1.1 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution.
- 1.2 A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers have been involved in revising specific parts of the Constitution. This report proposes amendments to Parts 2 (Articles of the Constitution), 4 (Council Rules of Procedure), 11 (Contract Rules of Procedure) and 12 (Personnel Rules of Procedure) in light of legislative changes, policy changes and recent government guidance.
- 1.3 The amendments to Part 11 of the Council's Constitution (Contract Rules of Procedure) are required to implement the Public Contracts Regulations 2015. There are several amendments to Part 11 which are necessary to comply with the Public Contracts Regulations 2015, practices and procedures.
- 1.4 The purpose of Part 11 is to set minimum rules and should not be treated as a guide to Procurement within the Council. It sets out the rules governing contracts in accordance with the aforementioned Act.
- 1.5 Following the publication of new regulations on local authorities' disciplinary procedures for removing a senior statutory officer, The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881), the Council is required to amend its Constitution in order to incorporate the new arrangements for taking disciplinary action against the most senior council staff. This modification must be made by the first ordinary council meeting held after the 7 May 2015 elections. These changes are incorporated into Parts 2 and 12 of the Constitution. Authority is also being sought to delegate any additional changes required to the Constitution to the Monitoring Officer to make.

## 2. Part 2 Articles of the Constitution

- 2.1 Following the discussion at the Governance and Audit Committee meeting on the 27 April 2015 the following amendment is required to this part of the Constitution:
  - Amend paragraph 2.9.3 to reflect the changes required to the role of the Independent Person as a result of the enactment of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881).

## 3. Part 4 Council Rules of Procedure

- 3.1 The following minor changes have been made to the document by the Finance and Governance Group:
  - (a) Reference to legislation has been updated where appropriate;

- (b) Typographical errors have been corrected and references to his/her have been removed;
- (c) Following the removal of the legislative requirement to hand deliver hard copies of the Council agendas to Members' homes the relevant section has been updated;
- (d) The section on petitions has had a paragraph removed to avoid duplication with the information set out in Appendix C (Process for Dealing with Representations) to Part 13 (Codes and Protocols);
- (e) Recording of Opposition to a decision has been moved to the section on voting;
- (f) At the request of a Member the timeframe for submission of public and Member questions relating to an item on the agenda have been extended to two clear working days before the meeting; Corporate Board supported this timeframe and the Council is asked to consider whether or not the change is appropriate.
- (g) Following the introduction of the legislative requirement to record how Members vote on the budget an additional paragraph has been included to deal with this issue.
- (h) Appendix A has been re-written to take into account legislative changes.

### 3.2 The Governance and Audit Committee at its meeting on the 27 April 2015:

- supported the proposed changes as set out above with the exception of item (f). Their recommendation was that the status quo should be retained and that questions relating to items included on the agenda should be submitted by 10.00am one working day before the meeting.
- They also requested that paragraph 4.2.1 (C) the typographical error in the note be corrected.

The formatting of the report will be corrected once all the tracked changes are agreed.

## 4. Part 11 Contract Rules of Procedure

### 4.1 The following minor changes have been made to the document by the Finance and Governance Group

- Updated legislative reference to include the new EU Directives Directive (2014/24/EU, 2014/25/EU & 2014/23/EU) and the Public Contracts Regulations 2015 (the Regulations) in paragraph 11.1.14.
- Guidance and updates to replace the Desktop Procurement Guide. It is intended that general non-specific advice and guidance will be published and updated on the intranet.
- General duty to improve the economic, social and environmental well-being of West Berkshire in paragraph 11.2.3 and 11.2.4, Public Services (Social

Value) Act 2012. This came into force on 31 January 2013. It requires commissioners of services to think about how they can also secure wider social, economic and environmental benefits before they start the procuring process. It also encourages the Council when commissioning services to talk to their local provider market or community to design better services, often finding new and innovative solutions to difficult problems. These solutions can include creation of apprenticeships, partnership working with local stakeholders, working with local schools and colleges to develop employability skills that improve employment and social inclusion outcomes.

- Clarity on decision making and delegated powers prior to letting of contracts by reference to thresholds in paragraph 11.4.3 and 11.4.4. This introduces three levels of decision making. Generally all contracts over £500,000, where such contracts have not been approved in the Capital Programme, is a key decision requiring Executive approval. It is recommended that contract awards below £500,000, are delegated to the relevant Head of Service with approval from Corporate Board for contracts above £100,000.
- Removal of Pre-Qualification Stage (PQQ) stage (11.5.1).

Part 4 of the 2015 Regulations introduces requirements relating to below threshold procurements. The new requirements are driven to make public procurement more accessible to SMEs (an enterprise falling within the category of micro, small and medium-sized enterprises). Under Regulation 111 the Council is not permitted to include a PQQ stage in any procurement where the value of the procurement is below the EU threshold for goods and services (currently £172,514). However if the estimated value is less than £25,000, then this requirement does not apply. PQQ is unlikely to be necessary or proportionate for contracts below this sum.

- Advertising Requirements.
  - (1) Under the new transparency obligations, the Council is required to publish contract opportunities and award information on the Contracts Finder, where the contract is being advertised. Contracts Finder is a database/ portal run by the Cabinet Office. The threshold for publishing opportunities is £25,000, or standing order limits. The proposal is to set the Council's financial threshold to £100,000, after which it becomes mandatory for Officers to advertise.
  - (2) For contracts below £100,000, the table in 11.5.2 requires at least three invitations to quote to be sought from the market with at least one from a local supplier where appropriate. This change is required to address the impact on resources on running a tender exercise. However this does not mean a tender exercise is prohibited but adds flexibility in operational terms. Invitation to quote will be issued to a limited select group of providers and it is encouraged, where possible, legal and appropriate that these providers are SME (means an enterprise falling within the category of micro, small and medium-sized enterprises) and/or VCSE (means a non-governmental organisation that is value-driven and

which principally reinvests its surpluses to further social, environmental or cultural objectives).

(3) For contracts above the EU threshold the award opportunities will continue to be published on the Official Journal of the European Union however this information will now need to be mirrored on the Contracts Finder database.

(4) The Council's Procurement Portal is interfaced with a link to and publishes contract opportunities on both the OJEU and the Contracts Finder.

- Paragraph 11.11 on Exclusion and Exceptions

(1) This now provides two distinct mechanisms for determining where the requirement to conduct a regulated procurement is either excluded or where it can be excepted.

(2) Under 11.11.1 (d) is a new addition which deals with social care contracts that are let where procurement may not be appropriate and lists the circumstances.

(3) The exceptions procedure in 11.11.2 remains largely unchanged.

- Record keeping and reporting requirements under 11.13

The Council is required to record and keep a written report on each contract, framework agreement and dynamic purchasing system entered into under the Regulations.

(1) The information recorded must include information relating to the following (amongst other):

- (a) the qualification and selection of tenderers and the award;
- (b) where applicable, why electronic procurement is not used;
- (c) the use of the negotiated procedure without a call for competition;
- (d) how conflicts of interest have been managed; and
- (e) the non-application of the regulations in certain circumstances.

(2) The Regulations require the Council to document the progress of all procurement procedures including ensuring sufficient information is kept to justify decisions. This may include:

- (a) communications with contractors/suppliers; and
- (b) internal deliberations; and
- (c) preparation of procurement documents; and
- (d) any dialogue and negotiation; and

- (e) selection and award.

Documentation must be kept for three years from the award of the contract.

- Payment obligations under 11.15.5.
  - (1) The Regulations and the Statutory Guidance issued under Regulation 113 requires the Council to pay valid and undisputed invoices within 30 days. The Council is required to consider and verify invoices in "timely fashion". It also requires that any contracts that the Council enter into should also contain provision to impose the requirement of payments within 30 days.
  - (2) The Council is required to publish on the internet each year information on their performance in relation to this including the proportion of invoices paid on time to their first tier contractors. (Regulation 113(7)).
  - (3) In common with other monitoring requirements, this obligation will be monitored by the Cabinet Office's 'mystery shopper' service.
- Currently there is a requirement for the Head of Service when procuring a contract (mainly for works) over £50,000, (11.16.2) to require the contractor to have in place a performance bond in the event of contractor insolvency and non performance. It is proposed that this limit is increased to £500,000. The contractors when procuring these bonds will pass this cost on to the Council as part of their bid and this presents a cost implication.

4.2 The Governance and Audit Committee at its meeting on the 27 April 2015 noted the proposed changes.

4.3 The formatting of the report will be corrected once all the tracked changes are agreed.

## **5. Part 12 Personnel Rules of Procedure**

5.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 were made on 25<sup>th</sup> March 2015 and provide that before taking the final decision to dismiss any statutory officer (and not just the Head of Paid Service as now) by full Council, the Council must invite at least two Independent Persons to be members of a Panel, and Council must take into account any recommendation of that Panel before taking a final decision to dismiss.

5.2 The Panel must be a committee of the authority and therefore subject to all the legal requirements for committees, including the proportionality rules.

5.3 The Council therefore has to modify the Constitution to give effect to the new arrangements. The contracts of the Head of Paid Service, Monitoring Officer and S151 Officer will be updated to reflect these changes.

5.4 The Regulations only apply to dismissal of a statutory officer and not to disciplinary action short of dismissal.



- 5.5 The Governance and Audit Committee at its meeting on the 27 April 2015 noted these required amendments.

## **6. Proposals**

- 6.1 It is proposed that the Council considers and if appropriate approves the amendments to Parts 2 (Articles of the Constitution), 4 (Council Rules of Procedure), 11 (Contract Rules of Procedure) and 12 (Personnel Rules of Procedure).
- 6.2 Authority to be delegated to the Monitoring Officer to make any additional amendments to the Constitution arising from the enactment of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

## **7. Equalities Impact Assessment Outcomes**

- 7.1 This item is not relevant to equality.

## **8. Conclusion**

- 8.1 The report is a required update to take cognisance of legislative and policy changes. For the avoidance of doubt the changes will come into effect on 20 May 2015 if approved.

## **Appendices**

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Appendix A – Extract from Part 2 of the Constitution – Articles of the Constitution

Appendix B - Part 4 of the Constitution – Council Rules of Procedure

Appendix C – Part 11 of the Constitution – Contract Rules of Procedure

Appendix D –Part 12 of the Constitution – Personnel Rules of Procedure

## **Consultees**

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**Local Stakeholders:** Not consulted

**Officers Consulted:** Corporate Board, Andy Day, Sarah Clarke, Robert O' Reilly, Jane Milone, Shiraz Sheikh, Moira Fraser

**Trade Union:** Not consulted.