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# Amendments to the Constitution – Supporting Information

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## 1. Introduction/Background

- 1.1 Throughout the year the Governance and Ethics Committee is referred to proposed amendments to the Council's constitution and its rules of procedure where amendment is considered necessary. Subject to its view, matters are then referred to Council with a recommendation for adoption. This ensures that administrative processes remain effective and efficient.
- 1.2 This Report seeks to make amendments to four parts of the Constitution. In essence the proposals if approved would result in the following changes:
- (1) It would increase the level of debt that can be written off under delegated powers from £10k to £25k;
  - (2) Exceptions to the Contracts Rules of Procedure will no longer be required to be referred to Corporate Board as an item for information;
  - (3) Officers would be given delegated powers to make additional payments to officers in specified circumstances;
  - (4) Personnel Committee will designate the statutory posts of Director of Adult Social Services and the Director of Children's Services to suitable officers; and
  - (5) An updated Social Media Protocol for Councillors would be adopted.

## 2. Supporting Information

### Write off of bad debts

- 2.1 The Council's Head of Finance and Property is the Council's s151 officer. This is a statutory post and the post-holder has a statutory obligation to make arrangements for the proper administration of the Council's financial affairs.
- 2.2 Under the Council's Constitution, the Head of Finance and Property has delegated authority to write off write off arrears of irrecoverable debt of an amount not exceeding £10,000 and in cases where the debtor is subject to formal insolvency proceedings, sums exceeding £10,000. The Scheme of delegation additionally states that the Head of Finance and Property be authorised to write off amounts of up to £50 in respect of rent arrears.

A recent review of the delegated write off limits in our neighbouring Berkshire Councils has demonstrated that the level of delegated authority in West Berkshire is low. Details of the write off limits in the 6 Berkshire Unitary Authorities is detailed in the table below.

Name of Council	Details of delegation
<b>Bracknell Forest Borough Council</b>	Borough Treasurer / s151 Officer <b><u>£50,000</u></b>
<b>Reading Borough Council</b>	<p>No <i>bona fide</i> debt may be cancelled, other than by formal write off. The scheme of delegation gives delegated authority to Directors/Heads of Service delegated authority to write off debts, for a particular debtor, for sums up to £1,000 at their own discretion; and for sums of up to <b><u>£20,000</u></b> with the consent of the Strategic Finance Director. In both cases they must keep a written record of the debt and the reasons for writing it off.</p> <p>The Strategic Finance Director will report to the Policy Committee on the writing-off of individual debts of over <b><u>£20,000</u></b>. A record must be maintained for all debts written off.</p>
<b>Slough Borough Council</b>	<p>Recommend Write Off debts to SD, Finance and Resources (incl. stocks and stores). Any write offs over <b><u>£15,000</u></b> to Cabinet.</p> <p>Up to <b><u>£15k</u></b> and approved by s151 officer</p> <p>Up to £15k (and p.a.) and approved by s151 officer</p> <p>Up to £1k with Level 2 approval</p>
<b>West Berkshire District Council</b>	<p>Head of Finance - <b><u>£10,000</u></b> in cases of irrecoverable debt, <b><u>over £10,000</u></b> in cases of insolvency of the debtor.</p> <p><b><u>£50</u></b> in respect of rent arrears.</p>
<b>The Royal Borough of Windsor &amp; Maidenhead</b>	<p>To seek Cabinet approval to the write-off of redundant stocks and equipment in excess of <b><u>£20,000</u></b>.</p> <p>Head of Finance - To agree the write-off of bad debts within those functions that fall within the responsibilities of the Executive Director up to <b><u>£50,000</u></b> in each case and to refer larger sums to the Cabinet.</p>
<b>Wokingham Borough Council</b>	<p>Chief Finance Officer is responsible for Write Offs and Waivers</p> <p>Write off of uneconomic debts, or fees and charges, between £1,000 and <b><u>£25,000</u></b>.</p>

- 2.3 It is proposed to delete the separate delegation which appears in paragraph 3.10.6.9 of the Scheme of Delegation at Part 3 of the Constitution relating to rent arrears. It is additionally proposed that the Head of Finance & Property be given delegated authority to write off bad debts up to the sum of £25,000, with authority to write off larger debts up to £100,000 in the case of insolvency in consultation with the Portfolio Holder for Finance. Part 10 of the Constitution dealing with the Financial Rules of Procedure will also be amended to reflect this increase in delegated authority.

Contract Rules of Procedure

- 2.4 The Contract Rules of Procedure detailed at Part 11 of the Constitution make reference to Commercial Board, which has recently been re-named Procurement Board. The Contract Rules therefore need to be updated to reflect this name change.
- 2.5 It is currently a requirement of the Contracts Rules of Procedure that when officers propose to award contracts of a certain value using their delegated powers, they must first bring reports to Corporate Board and/or Operations Board to inform them of the proposed contract award. It is proposed to remove this requirement to bring reports for information.
- 2.6 Details of contract awards now form part of the Corporate Quarterly Reporting and Monitoring and it is considered that this combined with Procurement Board provides adequate corporate governance and oversight. Having regard to the processes that are currently in place, it is considered that the requirement to provide information Reports adds little value and the allocation of resources to the process is therefore unjustified. It is therefore proposed that the requirement to produce reports for information will be removed and Part 11 of the Constitution will be amended as detailed in Appendix G.

Incentive payments to employee's

- 2.7 On 23 November 2017, the Corporate Programme Board approved in principle a scheme by which officers could be encouraged to generate ideas which should produce revenue receipts by way of additional and new income streams for the Council.
- 2.8 The proposal is for those ideas delivering the agreed financial return, the officer(s) who generated the idea will be eligible to receive a payment up to a maximum of £5k per idea pitched. Officers of tier 3 and below will be eligible for payments under the scheme.
- 2.9 An amendment is therefore required to the Scheme of Delegation and Financial Rules of Procedure to enable these payments to be made. It is proposed that the delegated authority to make these payments be given to the Head of Finance & Property, in consultation with the Head of HR and the Portfolio Holder for Finance.

Appointment to statutory posts.

- 2.10 The Scheme of Delegation at paragraph 3.1.3 contains a Schedule of Council functions, which indicates that the Personnel Committee shall be responsible for making appointments to proper officer posts, and for exercising the Council's

statutory duty to appoint the Council's Head of Paid Service and a Monitoring Officer.

- 2.11 It has become apparent that a number of statutory posts were omitted from this table, notably the appointment of the Council's section 151 officer, who is responsible for ensuring that arrangements exist to ensure the proper administration of the Council's financial affairs.
- 2.12 The Council has a statutory duty under section 6 of the Local Authority Social Services Act 1970 to appoint an officer as the Director of Adult Social Services, who will have responsibility for the adult social services functions of the Council.
- 2.13 The Council also has a duty under section 18 of the Children Act 2004 to appoint an officer as a Director of Children's Services, who will have responsibility of the Council's education and social services functions for children.
- 2.14 Paragraphs 3.3.5.1 and 3.3.5.2 state that the Corporate Director Communities shall be appointed as the Council's Director of Adult Social Services and the Director of Children's Services.
- 2.15 In view of the statutory duties placed on the Director of Adult Social Services and on the Director of Children's Services, it is considered that the Personnel Committee should also be responsible for appointing suitable officers to fulfil these important statutory roles. It is proposed therefore that the Constitution be amended accordingly.

#### Social Media Protocol for Members

- 2.16 The officers Code of Conduct was updated in March 2018 following a review on the provisions relating to social media. This highlighted the fact that the review of the Social Media Protocol for Councillors was overdue.
- 2.17 Given the similarities in the issues that arise from the use of social media, it is proposed that in future, these provisions will be reviewed simultaneously for both Officers and Members.
- 2.18 Attached at Appendix H is a revised Social Media Protocol for Councillors. It is proposed that this will replace the existing Protocol which appears at Appendix K of Part 13 of the Constitution.
- 2.19 The amendments to the Scheme of Delegation were considered by the Council's Governance and Ethics Committee on the 26<sup>th</sup> November 2018. A number of amendments were proposed by Governance and Ethics to the updated Social Media Protocol for Councillors, which are now incorporated in the draft Protocol at Appendix K to this report.

### **3. Options for Consideration**

- 3.1 The options for consideration are as follows:
  - i. The Council could continue to operate under the existing constitutional provisions. This is not recommended.

- ii. The Council could adopt some of the proposed constitutional amendments. This is not recommended.
- iii. The Council could adopt the proposed constitutional amendments to ensure that the Constitution remains up to date.

#### **4. Proposals**

- 4.1 It is recommended that the proposed amendments to the Constitution be adopted by Council.

#### **Part 2 – Articles of the Constitution**

- 4.2 It is proposed that the amendments detailed in Appendix D be approved to enable the Personnel Committee to designate suitable officers to fulfil the statutory roles of the Director of Adult Social Care and/or the Director of Children's Services.

#### **Part 3 - Scheme of Delegation**

- 4.3 It is proposed that the Scheme of Delegation at Part 3 of the Constitution be amended as detailed in Appendix E.

- 4.4 In summary, the proposed amendments relate to the following:

- (1) The appointment of officers to fulfil statutory posts
- (2) The approval of delegated authority to the s151 Officer to write off bad debt up to £25,000.
- (3) The approval of delegated authority to make additional payments to employees in specified circumstances.

#### **Part 10 – Finance Rules of Procedure**

- 4.5 It is proposed that paragraph 10.17.1 of the Financial Rules of Procedure be amended as detailed in Appendix F, to enable the s151 Officer to write off bad debt up to £25,000 and debts of up to £100,000 in cases of insolvency in consultation with the Portfolio Holder for Finance.

#### **Part 11 – Contract Rules of Procedure**

- 4.6 It is proposed that Part 11 of the Constitution should be amended as detailed at Appendix G.

#### **Part 13 – Codes & Protocols**

- 4.7 It is proposed that Part 13 of the Constitution be amended by replacing the existing Social Media Protocol for Councillors with the revised protocol which appears at Appendix H of this report.

## 5. Conclusion

- 5.1 The Council's Monitoring Officer is required to monitor and review the Council's Constitution to ensure that the Council operates in an efficient and effective manner whilst meeting its legal obligations.
- 5.2 In order to ensure that the Council operates in a way that is both effective and efficient, it is recommended that the changes proposed above be approved by the Council.

## 6. Consultation and Engagement

Andy Walker, Andy Day, Robert O'Reilly, David Lowe, Moira Fraser, Shiraz Sheikh, Martin Dunscombe.

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### Subject to Call-In:

Yes: ☐ No: ☒

The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>
Delays in implementation could compromise the Council's position	<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>
Item is Urgent Key Decision	<input type="checkbox"/>
Report is to note only	<input type="checkbox"/>

**Wards affected:** All wards could be affected to the extent that the proposals in the Report, if adopted, will result in changes to the Constitution which governs how the Council conducts itself.

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### Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

☒ **MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority:

☒ **MEC1 – Become an even more effective Council**

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## Appendix D

### Proposed Amendments to Part 2 of the Constitution

#### Part 2 – Articles of the Constitution

It is proposed that the table at paragraph 2.8.7 be amended with the text in bold and italics below to note that the purpose of the Personnel Committee shall include the following:

***To designate an officer as the Director of Adult Social Care and to designate an officer as the Director of Children's Services.***

## Appendix E

### Proposed Amendments to Part 3 of the Constitution

1. The Table at paragraph 3.1.3 of the Constitution shall be amended to include the following:

<b><i>Duty to designate an Officer as the Council's section 151 officer</i></b>	<b><i>Personnel Committee</i></b>	<b><i>These functions will not be delegated further</i></b>
<b><i>Duty to designate an Officer as the Director of Adult Social Services</i></b>	<b><i>Personnel Committee</i></b>	<b><i>These functions will not be delegated further</i></b>
<b><i>Duty to designate an Officer as the Director of Children's Services</i></b>	<b><i>Personnel Committee</i></b>	<b><i>These functions will not be delegated further</i></b>

2. The following paragraphs in the Scheme of Delegation relating to the Corporate Director Communities should be deleted:

**3.3.5.1**      Shall be appointed as a Director of Children Services and carryout functions pursuant to section 18 of the Children Act 2004.

**3.3.5.2**      Shall be appointed as a Director of Adult Social Services and carryout functions pursuant to section 6 of the Local Authority Social Services Act 1970.

3. Paragraph 3.10.3.8 of the Scheme of Delegation referring to powers delegated to the Head of Finance and Property be amended as follows:

Decisions to write off arrears of irrecoverable debt of an amount not exceeding ~~£10,000~~ **£25,000** and in cases of insolvency where the sums exceed ~~£10,000~~ **£25,000 up to a maximum of £100,000, the decision should be taken in consultation with the Portfolio Holder for Finance.**

4. It is proposed to add an additional paragraph at 3.10.3 of the Scheme to provide as follows:

***In consultation with the Head of Human Resources, the Head of Legal Services and the Portfolio Holder for Finance, to make additional payments to qualifying employees of up to £5,000 where it is deemed appropriate to do so.***



## Appendix F

### Proposed Amendments to Part 10 of the Constitution

#### Part 10 – Finance Rules of Procedure

1. It is proposed that paragraph 10.17.1 of the Financial Rules of Procedure be amended as follows:

No debt due to the Council, after it has been correctly established, shall be discharged otherwise than by payment in full or by the writing-off of the debt or the unpaid portion of it, on the authority of the Head of Finance and Property or nominated officer where either:

- (a) the debt is not enforceable or that attempted recovery is likely to involve expensive litigation with limited hope of success; or

(b) the cost of recovery would be disproportionate to the amount involved;

- the debt does not exceed ~~10,000~~**£25,000** ~~or in cases of bankruptcy or liquidation the full amount.~~ ***In cases of insolvency where the debt exceeds £25,000 up to a maximum of £100,000, the decision shall be taken in consultation with the Portfolio Holder for Finance;***

- Housing rent does not exceed ~~10,000~~**£25,000**.