
Updates to the Constitution

Committee considering report:	Council
Date of Committee:	6 October 2022
Portfolio Member:	Councillor Tom Marino
Date Portfolio Member agreed report:	15 October 2022
Report Author:	Sarah Clarke
Forward Plan Ref:	C4260

1 Purpose of the Report

- 1.1 The purpose of this report is to update Council regarding the work undertaken by the Constitution Review Task Group (“the Task Group”) to date, and to propose the approval of the proposed Constitutional updates detailed in this report. The completion of the Constitution review is an important part of the overall good governance of the Council and has been highlighted as an area to complete in the Annual Governance Statement.
- 1.2 The report will also advise of the further work that will be undertaken in anticipation of further revisions that are due to be brought forward to Council in December.

2 Recommendations

- 2.1 It is Recommended that Council:
 - (a) approves the Meeting Rules including the Meeting Rules Table, the Questions Appendix, and the Petitions Appendix, which are attached at Appendix A to this Report;
 - (b) approves the Council Rules, which are attached at Appendix B to this Report;
 - (c) approves the Executive Rules, which are attached at Appendix C to this Report;
 - (d) approves the Council Bodies Rules, which are attached at Appendix D to this Report;
 - (e) approves the following Bodies Rules, which are attached at Appendix E to this Report:
 - Governance Appendix
 - Health and Wellbeing Appendix
 - Health Scrutiny Appendix
 - Licensing Appendix

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- Licensing Sub-Committee Appendix
 - Personnel Appendix
 - Planning Appendix
 - Scrutiny Appendix
- (f) notes that the above Rules will replace current Parts of the Constitution, namely:
- Part 4 – Council Rules of Procedure
 - Part 5 – Executive Rules of Procedure
 - Part 6 – Overview and Scrutiny Rules of Procedure
 - Part 7 – Regulatory and Other Committees
 - Part 12 – Personnel Rules of Procedure
 - Part 13 - Codes and Protocols – Appendix A - West Berkshire Code of Conduct for Planning
 - Part 13 – Codes and Protocols - Appendix B - Protocol for Decision-Making by Individual Executive Members
 - Part 13 - Codes and Protocols - Appendix B1– Individual Decision making Process
 - Part 13 - Codes and Protocols – Appendix C - Procedure Rules for Dealing with representations
 - Part 13 - Codes and Protocols - Appendix G - West Berkshire Code of Conduct for Licensing
 - Part 13 - Codes and Protocols – Appendix I - Councillor Call for Action Protocol
- (g) agrees that the changes to the Constitution detailed in this report, take effect from 1st January 2023;
- (h) delegates to the Monitoring Officer in consultation with the Chairman of the Constitution Review Task Group the power to make minor additional corrections to the parts of the Constitution to ensure consistency in terminology and presentation..

3 Implications and Impact Assessment

Implication	Commentary
Financial:	None directly although the report details the procedures to be followed at full Council when setting the budget. The report also details the process for decision making by Executive, which may consider reports that have significant financial implications.
Human Resource:	None
Legal:	This report proposes changes to the Council's Constitution, and will ensure a clear and transparent decision making framework.

Risk Management:	There is a risk that any decision of Council could be challenged. Having clear rules governing the manner in which meetings will be conducted, should reduce the risk of challenges being successful.			
Property:	None			
Policy:	None			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
Environmental Impact:	X			The recommendations in this report will enable some participation in Meetings remotely via technology, which will reduce the need for individuals to travel in person to meetings.
Health Impact:		X		
ICT Impact:		X		

Digital Services Impact:	X			The recommendations in this report recognise the ability to engage effectively with residents via social media and digital technology.
Council Strategy Priorities:		X		
Core Business:	X			It is considered that the recommendations in this report will support the effective administration of Council business and contribute to the good governance of the Council.
Data Impact:		X		
Consultation and Engagement:	<p>These proposals have been discussed with: The Constitution Review Task Group Finance & Governance Group Joseph Holmes – Executive Director (Resources) Shiraz Sheikh – Service Lead, Legal and Democratic Stephen Chard – Democratic Services Manager</p> <p>Two Member Workshops were also held, to which Members of the CRTG, and all Chairmen and Vice-Chairmen of existing Committees, Commissions, and the Executive were invited to attend.</p>			

4 Executive Summary

- 4.1 It was agreed in July 2019 that a Task Group of the Governance and Ethics Committee would be created to review the entire Constitution to ensure that it remained fit for purpose. The Task Group first met in September 2019, but work was subsequently delayed due to the pandemic.
- 4.2 This report proposes changes to the rules which govern how Council meetings will be conducted. These do not make significant alterations to the existing rules. However, they will provide clarity regarding rules, and a product that will be easier for everybody to navigate and understand.
- 4.3 It is recommended that Council retain the changes introduced in December 2021 relating to the Budget Meeting of Council be retained, as the procedure appeared to operate well during the Budget Meeting which took place in March 2022.
- 4.4 The new rules for Council meetings are structured to ensure a standard set of rules which will apply to all Council Meetings. The recommendation also proposes specific Council Rules, and Executive Rules, as Council and Executive are responsible for the

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most significant decisions taken by the Council, and both these bodies are subject to specific statutory arrangements.

- 4.5 At Appendix E of the report are a set of Council Bodies Rules. These rules apply to bodies established by Council such as Committees, Commissions, and Boards (Bodies). These rules set out the composition, terms of reference and any individual rules of procedure that apply to the Body in question.
- 4.6 The Constitution will be supported by a Glossary, which will define the meaning of key words that appear throughout the various parts of the updated Constitution. This is attached at Appendix F.

5 Supporting Information

Introduction & Background

- 5.1 The Council is undertaking a comprehensive review of the Constitution and this report seeks approval to adopt the first significant part of that.
- 5.2 The Constitution Review Task Group ('Task Group') is a working group consisting of the following Members: Jeff Beck, Graham Bridgman (Chairman), Jeff Brooks, James Cole, David Marsh, Andy Moore, and Howard Woollaston. Councillor Geoff Mayes is a former member of the Task Group. The significant contribution of the Task Group in the formulation of these proposals and the updating of the Constitution should be noted.
- 5.3 This work has also been supported by a number of officers in the Democratic Services Team and from Legal Services, and their contribution to this significant piece of work should also be noted.
- 5.4 Initially the intention was to deal with each existing Part of the Constitution in turn, seeking approval from Council for any required amendments before progressing to the next Part. However, it quickly became apparent that there was considerable overlap and duplication between different Parts, for example, similar or identical rules relating to meetings were contained in Parts 4, 5, 6, and 7. It was therefore determined to seek to create a common set of rules applicable to all formal meetings, with appendices dealing with any differences (eg between particular committees).
- 5.5 It should be noted that the need to undertake the wholesale review of the Constitution was driven by a desire to make the document more user friendly and accessible to all. If approved, the Constitution will be published on-line when it becomes operational, and there will be full indexing with hyperlinks where appropriate.
- 5.6 It is considered that the recommendations in this report will make the rules by which the Council must operate more easy to understand.

Proposals

- 5.7 It is proposed that the Council adopt the Meetings Rules at Appendix A of this report. These rules provide a common set of operating rules that will apply to public meetings of the Council. This sets out core matters such as the type and order of business at various meetings of the Council. This Part also distinguishes between Motions (proposals that can be submitted by any Member of the Body for debate), and Reports

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and Recommendations. It is considered that these changes will add improved clarity regarding the process to be followed in a meeting.

- 5.8 The Council has on occasion over the past few years, received a significant number of Motions at meetings of Council, which has created a time pressure on the substantive agenda. The new rules require that the Chairman consult with each Group Leader to assist with his consideration of the priority order of the debates that may take place in the Council Meeting.
- 5.9 The Meeting Rules are supported by a Meetings Rules Table, which is a quick reference guide for anybody wishing to check a rule of procedure related to meetings. This contains information such as the standard items of business at a meeting and the order in which business will be transacted. This also contains details of the procedural motions that can be moved without notice.
- 5.10 There are two further Appendices, one dealing with Questions and one dealing with Petitions. The Questions Appendix does not make any significant change to the current arrangements.
- 5.11 In terms of the Petitions Appendix, this was reviewed as the previous rules related to statutory provisions which were repealed by the Localism Act 2011. The proposed new rules do not change any of the existing limits on the submission of Petitions. Where a Member of the Public submits a petition, they will be informed as to how the petition will be dealt with and will be invited to make representations if their petition is to be considered at a future public Meeting of the Council.
- 5.12 The Council Rules explains the role and purpose of Council, and details procedures that are specific to Council. These proposals effectively replicate the rules that were adopted by Council in December 2021. Many of those changes focussed on the Budget Meeting, and the revised rules were implemented effectively at the Budget Meeting of Council in March 2022. It is therefore proposed that these will continue in force as set out in Appendix B.
- 5.13 The Executive Rules at Appendix C explain the role and purpose of the Executive, and details procedures that are specific to proceedings of the Executive. This effectively outlines the statutory framework that is detailed in the Local Government Act 2000, and in related regulations, that determines how the Executive must operate.
- 5.14 The Council Bodies part at Appendix D explains what Council Bodies are. These are effectively the Committees, Commissions, or Boards that are created by Council to undertake work delegated to those Bodies by Council, or directly by statute. This also details how those Bodies may create Sub-Bodies, such as task groups to undertake specific tasks, and sets out the rules regarding the operation of those Sub-Bodies.
- 5.15 Appendix E details the various Appendices that apply to different Bodies. Each one sets out the scope of the Body, the Membership, and Terms of Reference. If agreed by Council, it would be proposed to bring each Appendix to Council for review on an annual basis, with these being approved at the Annual Meeting when Council approves the establishment and Membership of the various Council Bodies. Such a process will ensure that these documents remain up to date with necessary changes.

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- 5.16 The Bodies dealt with at Appendix E undertake important work on behalf of the Council. The rules applicable to those bodies have not been significantly altered by the proposed changes. However, the changes have sought to ensure that the rule applicable to those Bodies are more easily found. For example, the Planning Appendix contains provisions that were previously detailed in Part 7, and the Planning Code of Conduct at Part 13. This also seeks to ensure that there is greater clarity regarding the need for Planning Committees to give reasons for decision, and to be clear about conditions that are proposed to be attached to any planning permission.
- 5.17 The Personnel Appendix has been expanded to clarify the role of Members in the appointment of senior officers (Head of Service and above), and in the dismissal of relevant statutory officers.
- 5.18 The Scrutiny Appendix largely replicates the rules that already exist, although this now contains the rules on call in which were previously replicated in the Executive Rules.
- 5.19 It is proposed that these provisions be implemented with effect from January 2023. This will enable the conclusion of the review of Parts 9, 10, and 11 of the Constitution, which contain the Budget and Policy Rules, the Financial Rules, and the Contract Rules by the Task Group. It is intended that the proposed changes to these parts of the Constitution will be brought to Council in December 2022 for consideration.
- 5.20 Delaying implementation of the updates proposed by this Report will ensure that there is no conflict between those Parts that have not yet been reviewed and those which have been updated, which are key parts of the Constitution governing the critical core business of the Council
- 5.21 Once Council has approved the changes, work will be required by the Digital Services Team to create new webpages with relevant hyperlinks. All changes to key operational elements of the Constitution will then be implemented and published together.

6 Other options considered

- 6.1 Not making any changes to the current Constitution. This option was rejected as the Council must keep the Constitution under review and it is suggested that changes will assist good governance as the procedures by which the Council is operating will be easier to understand, which will improve transparency and openness.

7 Conclusion

- 7.1 The ongoing hard work and significant contribution of the Task Group to the review of the Constitution is noted.
- 7.2 It is considered important to secure Council's approval of these core operating rules, which will enable the second phase of the Constitution updates to be brought to Council in December. It is anticipated that at the conclusion of the second phase, the updated rules will be capable of operating without risk of significant conflict in the Constitutional provisions.
- 7.3 It is therefore recommended that Council approve the proposals detailed in section 2 of this report, to be implemented from January 2023.

8 Appendices

- 8.1 Appendix A – Meetings Rules (To follow)
- 8.2 Appendix B – Council Rules (To follow)
- 8.3 Appendix C – Executive Rules (To follow)
- 8.4 Appendix D – Council Bodies Rules (To follow)
- 8.5 Appendix E – Individual Bodies Rules (To follow)

Background Papers:

None

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Overview and Scrutiny Management Committee or associated Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only

Officer details:

Name: Sarah Clarke
Job Title: Service Director, Strategy & Governance
Tel No: 01635 519596
E-mail: sarah.clarke@westberks.gov.uk
