
Updates to the Constitution

Committee considering report:	Governance and Ethics Committee
Date of Committee:	6 March 2023
Portfolio Member:	Councillor Tom Marino
Date Portfolio Member agreed report:	E-mailed on 23 February 2023
Report Author:	Sarah Clarke
Forward Plan Ref:	C4272

1 Purpose of the Report

- 1.1 The purpose of this report is to update Governance and Ethics, ahead of Council regarding the work undertaken by the Constitution Review Task Group (“the Task Group”), and to propose the approval of the proposed Constitutional updates detailed in this report.
- 1.2 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.
- 1.3 The report will also advise of the further work that will be undertaken in anticipation of further revisions.

2 Recommendations

- 2.1 It is proposed that Governance and Ethics Committee consider this report and recommend that Council:
 - (a) approves the Budget and Policy Framework, which is attached at Appendix A to this Report;
 - (b) approves the Financial Rules, which are attached at Appendix B to this Report;
 - (c) approves the Contract Rules, which are attached at Appendix C to this Report;
 - (d) notes that the above Rules will replace current Parts of the Constitution, namely:
 - Part 9 – Budget and Policy Framework Rules of Procedure
 - Part 10 – Financial Rules of Procedure
 - Part 11 – Contract Rules of Procedure
 - (e) approves the Glossary, which is attached at Appendix D to this Report;

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- (f) approves the final version of the Parts of the Constitution that were previously agreed by Council in October 2022, which are attached at Appendix E to this Report;
- (g) agrees that the changes to the Constitution detailed in this report, take effect from April 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;
- (i) delegates to the Monitoring Officer the power to make corrections, to the Constitution to reflect organisational restructures.

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, and when decisions are taken that have 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

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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:	These proposals have been discussed with: The Constitution Review Task Group Finance & Governance Group Joseph Holmes – Executive Director (Resources) Nicola Thomas – Service Lead, Legal and Democratic Stephen Chard – Democratic Services Manager			

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 The review of the Constitution has not proposed any significant alterations to the existing rules, but it should provide clarity regarding the Council’s rules and procedures, and a product that will be easier for everybody to navigate and understand.
- 4.3 At its meeting in October 2022, Council approved a number of replacement parts of the Constitution, largely governing how business would be transacted at meetings of various Council Bodies. Implementation of those parts was delayed pending the conclusion of Phase 2 of the Constitution Review, which is detailed in this report.
- 4.4 This report outlines changes proposed following the Phase 2 work, which comprised of a review of the following Parts of the Constitution:
 - Part 9 – Budget and Policy Framework Rules of Procedure
 - Part 10 – Financial Rules of Procedure
 - Part 11 – Contract Rules of Procedure
- 4.5 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 D.

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 updated Parts following the completion of Phase 2 of the review.
- 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.

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- 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 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.
- 5.5 At its meeting in October 2022, Council approved a number of replacement parts of the Constitution, largely governing how business would be transacted at meetings of various Council Bodies. The final version of those parts is attached to this report at Appendix E.
- 5.6 This report also proposes changes to a number of business critical parts of the Constitution, namely:
 - Part 9 – Budget and Policy Framework Rules of Procedure
 - Part 10 – Financial Rules of Procedure
 - Part 11 – Contract Rules of Procedure

Proposals

- 5.7 It is proposed that the Council adopt the updated Budget and Policy Framework, detailed at Appendix A of this report. This details the process by which plans, policies or strategies detailed within the Framework will be developed and approved.
- 5.8 The Budget and Policy Framework also details the actions that must be taken in the event that a decision is taken, or is proposed to be taken, which is or would be outside the scope of the Framework.
- 5.9 The Council is subject to statutory controls, audit, and must account for its actions and financial decisions. The report therefore proposes updates to the Financial Rules, which will provide a common standard to be adopted in any financial dealings by or on behalf of the Council. The updated Financial Rules, which are recommended for approval, are attached at Appendix B.
- 5.10 The changes proposed do not recommend any significant changes to the existing rules. However, these have been restructured so that there are a set of common Financial Rules, supported by a series of appendices which provide detailed rules of procedure.
- 5.11 Council will note that it is proposed that the virement threshold for Capital Spend be increased so that it is aligned with the Revenue virement thresholds. This increases the threshold for delegated officer decisions on Capital virements from £50k to £100k, subject to the parameters detailed in Appendix B.
- 5.12 Section 135 of the Local Government Act 1972 requires that local authorities have in place standing orders (or rules) for the making by them, or on their behalf, of contracts for the supply of goods or materials or for the execution of works. The Council's Contract Rules ensure that the Council complies with this legal obligation.

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- 5.13 The Contract Rules of procedure have therefore been reviewed, and the proposed updated Contract Rules appear at Appendix C of this report. As with other parts, the amendments proposed do not make any significant changes to the existing rules, but it is hoped that the changes will make the document easier to navigate and understand.
- 5.14 The Task Group considered whether it would be appropriate to review the current contract thresholds, with a view to increasing those as comparative data across Berkshire obtained by colleagues in the Commissioning and Procurement Service, indicates that West Berkshire Council has lower delegated thresholds than the other Berkshire authorities.
- 5.15 Internal Audit are however about to conduct an audit review of the procurement processes, and it was considered that it would be beneficial to await the conclusion of that review, which will consider the apparent anomalies with neighbouring councils. If following that it is considered that the thresholds should be amended, these will form part of a separate report.
- 5.16 The report is proposing a slight variation to the process by which contracts, requiring Executive approval, are dealt with. At present, contracts with a value over £2.5million are sent to Executive at the end of the procurement process, prior to contract award. This can present difficulties with the timing of an award. It is therefore proposed that the Executive will be provided with Quarterly Contract Update reports, which shall seek delegated authority within the parameters detailed in that report, and which will require consultation with the Executive Portfolio Holder, the Section 151 Officer and the Monitoring Officer.
- 5.17 In the event that delegated authority is given, officers would still be required to place a notice on the forward plan prior to the exercise of a delegated authority to enter into a contract with such a value. This will ensure that such decisions continue to be taken in an open and transparent manner.
- 5.18 It is proposed that these provisions be implemented with effect from April 2023.
- 5.19 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.
- 5.20 The new constitution will be supported by a Glossary, which is considered essential to assist with the understanding and use of the Constitution by any party. The proposed Glossary is therefore attached at Appendix D.

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 assist the effective operation of the Council, and help to promote strong and effective governance.
- 7.3 It is therefore recommended that Council approve the proposals detailed in section 2 of this report, to be implemented from April 2023.

8 Appendices (all to follow)

- 8.1 Appendix A – Budget and Policy Framework
- 8.2 Appendix B – Financial Rules
- 8.3 Appendix C – Contract Rules
- 8.4 Appendix D – Glossary
- 8.5 Appendix E – Meeting and Council Bodies Rules

Background Papers: None

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 Committee 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"/>

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