

Title of Report:	Amendments to the Constitution - Part 4 (Executive Rules of Procedure), Part 5 (Council Rules of Procedure), Part 11 (Contract Rules of Procedure) and Part 13 Appendix A (Code of Conduct for Planning)
Report to be considered by:	Council
Date of Meeting:	13 December 2012
Forward Plan Ref:	C2551

Purpose of Report:

1. To consider changes to the Executive and Contract Rules of Procedure in light of legislation changes following a review by the Finance and Governance Group.
2. To propose an amendment to the Council's Rules of Procedure (Paragraph 4.13.7) which deals with substantive amendments to the Council's annual budget.
3. To propose an amendment to Part 13 Appendix A (Code of Conduct for Planning) to align the training requirements with those of the Licensing Committee.

Recommended Action:

1. To discuss the proposed and any additional revisions to Part 5 of the Constitution and to recommend the agreed amendments to full Council, via Management Board and Governance and Audit Committee for approval.
2. That the Council's Rules of Procedure be amended to require that any substantive amendments proposed to the Council's annual budget be submitted to the Council's Section 151 Officer at least 3 clear working days before the date of the Council meeting in March.
3. That the Council's Code of Conduct for Planning be amended to require all Members of Planning Committees should receive training before taking their seat on the Committee.
4. To discuss the proposed and any additional revisions to Part 11 of the Constitution and to

recommend the amendments to Council via Management Board and the Governance and Audit Committee.

5. The Procurement Board approves the Desktop Procurement Guide in consultation with the Head of Legal and Head of Finance.

Reason for decision to be taken:

To ensure that the Council has established a Constitution that is in accordance with statutory requirements / good practice and that there are processes in place ensuring the effective management and maintenance of the Constitution in accordance with good practice guidelines (e.g. CIPFA / SOLACE Code of practice for Corporate Governance)

To ensure that any substantive amendments proposed to the Council's annual budget are received by the Council's Section 151 Officer for confirmation that it complies with Financial Regulations and Statutory requirements.

Other options considered: None

Key background documentation:

The Local Government Act 2000 (Constitution) (England) Direction 2000
The Localism Act 2011
The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

The proposals will also help achieve the following Council Strategy principle:

CSP9 - Doing what's important well

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

To ensure that the constitution is up to date and accords with the relevant legislation

Member Details	
Name & Telephone No.:	Councillor Jeff Beck (Chairman of Governance and Audit Committee) – Tel (01635) 44770/ Councillor Alan Law - Tel (01491) 873614
E-mail Address:	jbeck@westberks.gov.uk/ alaw@westberks.gov.uk
Date Portfolio Member agreed report:	Discussed with Councillor Jeff Beck on 31 st October 2012

Contact Officer Details	
Name:	Andy Day/ Shiraz Sheikh
Job Title:	Head of Strategic Support/ Solicitor Corporate Services Team
Tel. No.:	01635 519459/ 01635 519431
E-mail Address:	aday@westberks.gov.uk/ssheikh@westberks.gov.uk

Implications

- Policy:** Will require Parts 4, 5, 11 and 13 of the Constitution to be amended and accords with the Council's policy of reviewing the Constitution
- Financial:** None – will be undertaken within existing resources.
- Personnel:** None
- Legal/Procurement:** Will include changes to the Constitution.
The amendments to Part 4 accord with the Local Government Act 2000
- Property:** None
- Risk Management:** None
- Equalities Impact Assessment:** Stage 1 EIA completed.

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"/>
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"/>

Executive Summary

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 review the Council's Constitution on a regular basis. 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 now 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 4, 5, 11 and 13 of the Constitution.

2. Proposals

- 2.1 That the amendments to Parts 4, 5, 11 and 13 of the Council's Constitution are approved in order to ensure that the Council has established a Constitution that is in accordance with statutory requirements / good practice and that there are processes in place ensuring the effective management and maintenance of the Constitution in accordance with good practice guidelines (e.g. CIPFA / SOLACE Code of Corporate Governance).

3. Equalities Impact Assessment Outcomes

- 3.1 EIA Stage 1 attached as Appendix A.

4. Conclusion

- 4.1 The report is a required update to consider amendments to the Executive and Contract Rules of Procedure in light of changes to legislation.
- 4.2 The amendment proposed to Paragraph 4.13.7 will provide greater certainty and clarity to matters arising from the budget setting arrangements for the Council.
- 4.3 The amendment proposed to paragraph 21 of Appendix A to part 13 of the Constitution (Code of Conduct for Planning) will assist with aligning the training requirements of Members of the Planning Committee with those of the Licensing Committee.

Executive Report

1. Introduction

- 1.1 The internal audit review of the Constitution made a number of recommendations to enhance the management of the Constitution including:
- (1) That the Finance and Governance Group should establish a process to review the content and application of the Constitution on an annual basis in accordance with the requirements of the Council's Local Code of Corporate Governance.
 - (2) That members of the Finance and Governance Group are allocated responsibility for maintaining specific Articles and Rules of the Constitution.
 - (3) That the Finance and Governance Group should monitor progress of proposed amendments to the Constitution to ensure that they are appropriately approved and published.
- 1.2 A timetable was established for the Finance and Governance Group to review individual sections of the Constitution and relevant Officers have been allocated responsibility for maintaining specific parts of the Constitution. Given the wide ranging nature of the Constitution a number of Officers have contributed to the review of each Part. This report proposes amendments to Parts 4, 5, 11 and 13 of the Constitution.
- 1.3 Members of the Planning Policy Task Group noted that there was an inconsistent approach in respect of training for Members of the Planning and the Licensing Committees and they therefore requested that the Planning Protocol attached as Appendix A to Part 13 of the Constitution be amended to reflect the approach taken by the Licensing Committee.
- 1.4 The attached Contract Rules of Procedure (Part 11) are made in accordance with the requirements under section 135 of the Local Government Act 1972. There are several amendments to Part 11 which are necessary to comply with current legislation, practices and procedures. The amendments also seek to make Part 11 more concise and as a result there has been reduction in content to 10 pages. This takes into account user feedback from Officers and Members.
- 1.5 The purpose of Part 11 is to set basic rules for procurement and should not be treated as a guide to Procurement within the Council. The process for procurement will be set out in a separate document. The Constitution sets out the rules governing contracts in accordance with the aforementioned Act. Part 11 sets out minimum requirements to be followed when procuring in accordance with relevant procurement legislation.
- 1.6 It is intended a Desktop Procurement Guide will be developed by the Procurement Board which will set out information and guidelines for procurement activity throughout the Council. This will also include various protocols and guidance that exists now which is in need of an updating.

2. Outline of the Changes

Part 4 – Council Rules of Procedure:

- 2.1 The Council's constitution and, in particular, the Council Rules of Procedure currently contain a paragraph (4.13.7 set out below) which deals with amendments which have financial implications.

“Amendments relating to in year reports or motions to Council which have financial implications should be the subject of discussions with and receive the approval of the Council's Section 151 Officer in advance of the meeting to ensure that the amendment does not compromise the Council's financial position.”

- 2.2 Although the above paragraph requires amendments to be approved by the Council's Section 151 Officer there is no timeline provided by which amendments have to be submitted. It is accepted that during the course of debate at the budget Council meeting that their may be minor amendments proposed on the night which do require the Section 151 Officer to approve at that time. This may require a short adjournment in the proceedings to seek advice and clarification.
- 2.3 However, it is suggested that to provide some clarity to Paragraph 4.13.7 any substantive amendments proposed to the annual budget should be submitted to the Council's Section 151 Officer at least three working days before the day of the Council meeting. This will enable the Section 151 Officer to scrutinise any proposals set out in the amendment and to provide a view on whether the amendment is sound or whether it compromises the Council's financial position.
- 2.4 It is therefore suggested that the Paragraph 4.13.7 be amended as follows:

“Amendments relating to in year reports or motions to Council which have financial implications should be the subject of discussions with and receive the approval of the Council's Section 151 Officer in advance of the meeting to ensure that the amendment does not compromise the Council's financial position. In relation to the budget meeting, any substantive amendments proposed to the budget should be submitted to the Council's Section 151 Officer for approval at least three working days before the meeting”.

Part 5 – Executive Rules of Procedure:

- 2.5 A definition of the key decisions has been inserted in Part 4 (it is contained in part 2 already) to aid decision making.
- 2.6 The section on the Strong Leader has been clarified in accordance with decisions made at the Council meeting at the time the process was introduced.
- 2.7 The section on petitions has been amended, as it will be for all sections relating to petitions, to signpost readers to the protocol in Part 13 to avoid duplication and in some instances disparity between the protocol and Parts 4, 5, 6 and 7 of the Constitution.
- 2.8 The section on decisions not subject to call- in has been clarified following a recent query about this section of the Constitution.

- 2.9 The sections pertaining to the Forward plan and Key Decisions has been amended in light of the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Part 11 – Contract Rules of Procedure:

- 2.10 Part 11 has been rewritten into a concise layout arranged over 14 short sections. The amendments cover what was previously included except for the changes outlined below and marked on the attached. Duplications have been removed which existed in previous versions and users will find that it flows better. The attached copy shows the track changes which have been made.

- 2.11 The main changes are as follows:

- (1) Lay out of the threshold is now arranged into a table format. No changes on the limits have been made. The reference to Protocol for Member Involvement has been taken out as this was an outdated document and member involvement in procurement which leads to a tender is now a matter of course. It is proposed that the Desktop Procurement Guide will cover and update guidance in this connection.
- (2) Lengthy authorisation process has been clarified to include: any contract must give effect to a decision or resolution of the Executive, an authorised member of the Executive or one of its committees or sub committees.
- (3) Tendering principles now include references to legal aspects which are necessary to avoid challenges as listed in clause 11.8.
- (4) The Council increasingly uses electronic process to place tenders and receive tender which is consistent with EU procurement rules. From 2014, it is proposed (under the new legislative proposals) that all tenders must be placed electronically, and must be received in the same format. The amended section 11.9 contains minimum requirements for member involvement in opening of all tenders whether electronically received or not. Emphasis on member involvement on both electronic and traditional tender opening has been re-stated.
- (5) The granting of exceptions has now been consolidated into one area under section 11.11 to avoid legal challenges to granting of exception to these rules. References to the Public Procurement Regulation and EU rules have now been clarified. References to the use of Purchasing Schemes which were not clear in the previous version are included.
- (6) Section 11.11.13 now includes the requirement for all exceptions to go through Procurement Board which includes Members. This reflects changes made corporately to oversee procurement activity and produce a procurement strategy for the Council.
- (7) A new section 11.12 on the use of purchasing schemes has been added to clarify what these are and where there are legally permitted to be used.

- (8) Process dealing with tenders on both local and EU threshold levels has been consolidated so that there is no longer unnecessary duplication in procedures.
- (9) In the Prevention of Corruption section (11.13) outdated terminology around prejudicial and other interests has been changed and been revised. The reference to the repealed legislation has been removed.
- (10) The section on engagement of consultants was misleading and often gave an incorrect impression as to what process is followed. This has been consolidated into the main tendering sections where engagement of a consultant for certain services has to be procured in the same way as any other services contract and is subject to the application of the procurement law unless it falls under the exceptions and derogations. It is proposed that detailed guidance is provided in the Desktop Procurement Guide on this topic.
- (11) The requirement for all purchases to be evidenced in writing (written contract) is dealt within the new section 11.14 and legislative references have been updated.
- (12) Generally references to the previous Procurement Unit have been removed to reflect the current structure.

Part 13 (Codes and Protocols), Appendix A (Code of Conduct for Planning):

2.12 It is suggested that paragraph 21 is amended as follows:

Delete –

“All members of any planning committee must receive training before taking their seat on committee. If introductory training is not undertaken then councillors may not be on any planning committee. Councillors should also undertake such updating training as may be recommended from time to time.”

Replace with –

“All Members of Planning Committees must receive training before taking their seat on the Committee. If introductory training is not undertaken then Councillors may not be able to serve on any Planning Committee. Councillors will also undertake such updating training as may be recommended from time to time. Failure to attend updating training will mean Councillors may not continue to sit on the Planning Committee.”

2.13 This mirrors the requirement for the Licensing Committee.

3. Conclusion

3.1 The report is a required update to consider amendments to the Council, Executive and Contract Rules of Procedure in light of changes to legislation.

3.2 The amendment proposed to Paragraph 4.13.7 will provide greater certainty and clarity to matters arising from the budget setting arrangements for the Council.

- 3.3 The amendment proposed to paragraph 21 of Appendix A to part 13 of the Constitution (Code of Conduct for Planning) will assist with aligning the training requirements of Members of the Planning Committee with those of the Licensing Committee.

Appendices

Appendix A – Equality Impact Assessment – Stage 1

Appendix B – Part 5 (Executive Rules of Procedure with changes tracked)

Appendix C – Part 11 (Contract Rules of Procedure with changes tracked)

Consultees

Local Stakeholders: N/a

Officers Consulted: Finance and Governance Group, Corporate Board

Trade Union: Not consulted

APPENDIX A

Equality Impact Assessment – Stage One

Name of item being assessed:	Amendments to Parts 4,5 and 11 of the Council's Constitution
Version and release date of item (if applicable):	
Owner of item being assessed:	Andy Day
Name of assessor:	Andy Day
Date of assessment:	19 October 2012

1. What are the main aims of the item?
The item is to approve the amendments to Parts 4, 5 and 11 of the Council's Constitution.

2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation)		
Group Affected	What might be the effect?	Information to support this.
Further comments relating to the item:		
There are not believed to be any implications affecting any groups with this item. The item is to discuss the proposed amendments to Parts 4, 5 and 11 of the Council's Constitution. This means that Officers making decisions will be required to act according to Council Policy already in place, and remain neutral when making a decision.		

3. Result (please tick by clicking on relevant box)	
<input type="checkbox"/>	High Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	Medium Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	Low Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input checked="" type="checkbox"/>	No Relevance - This does not need to undergo a Stage 2 Equality Impact Assessment

For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.

4. Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	
Stage Two not required:	x

Name: Andy Day

Date: 19 October 2012