

Name of meeting: Corporate, Governance and Audit Committee

Date: 11 May 2018

Title of report: Proposed changes to the Council's Constitution

Purpose of report

To set out proposed changes to the Council's constitution as described in paragraph 2 and as set out in more detail in the attached Appendices, which show some of the proposed amendments.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	N/A
The Decision - Is it eligible for "call in" by Scrutiny?	N/A
Date signed off by Director & name	
Is it also signed off by the Service Director for Finance, IT and Transactional Services?	
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Yes – 27 April 2018
Cabinet member portfolio	Graham Turner

Electoral wards affected: N/A

Ward councillors consulted: N/A

Public or private: Public

1. Summary

1.1 To set out proposed changes in relation to different sections of the constitution and seek approval by members of those proposed changes at paragraph 2 marked with a double asterix. Each section of the Constitution is set out below with information setting out details of the proposed change for which approval and/or comments is sought.

1.2 There have been some minor changes using delegated authority granted to the Monitoring Officer by Council on 20 May 2015 to reflect changes to officer's titles, typing or grammatical errors, old references and new legislation. The list of changes made using the Monitoring Officer's delegation are set out in the attached Appendix A for information.

- 1.3 The constitution has been reviewed during the year in relation to some areas. This is an on-going process to ensure it is correct and up-to-date and reflects any changes to re-structure, procedures and legislation. The outcome of that review is set out in this report.

2. Information required to take a decision

PART 1 – SUMMARY AND EXPLANATION

- 2.01 This provides a summary and explanation of what is included in the constitution. This has been reviewed and there are no requests for approval for any changes.

PART 2 – ARTICLES

- 2.02 There are 17 articles that set out how the council operates. This has been reviewed and there are changes to the following:-

2.03 Article 7 – The Executive

Following the consideration given throughout the year to the change in approach to DBS checks, it is suggested the following wording is added

‘The Leader shall require the Cabinet member post holders of Children’s and Adults to undertake an Enhanced DBS check in accordance with the DBS Policy’.

The Leader following consultation has confirmed the approach which is to be taken and the amendment is attached for information at Appendix B.

A policy will be drafted that sets out the circumstances and procedure for carrying out those checks. In essence, this will affect the roles which are included within this report at section 2.03 and paragraph 2.12.

2.04 Article 13 – Decision Making Principles **

Members are asked to consider and provide approval for the decision making principles. These have been reviewed and updated to simplify them and keep them in line with current good practice and improve the wording relating to the decision making principles. The changes were approved by Corporate, Governance and Audit on 9 March 2018 for agreement by Council and are attached at Appendix C.

Members are referred to paragraph 2.19 of the report which sets out the recommendations of this committee on 9th March about this matter.

PART 3 - RESPONSIBILITY FOR FUNCTIONS

- 2.05 This part details the council’s cabinet, committees’ and other groups’ responsibilities. This section also contains each individual Cabinet Member’s specific responsibilities

Section F sets out the scheme of delegation to officers. This includes executive and non-executive delegations to officers. There have been changes to titles and responsibilities following a review of the Senior Management structure and as a result of the s.151 officer leaving. The relevant amendments were made over the last year using the Monitoring Officers delegation and are set out in the attached Appendix A.

PART 4 – RULES OF PROCEDURE

2.06 This section contains eight documents which describe how Councillors and Officers conduct themselves in meetings and make decisions about certain matters. The documents where amendments are sought are listed below.

2.07 Council Procedure Rules**

CPR 12 (2) currently states '*The Mayor/Chair in consultation with the Chief Executive may determine that a question shall not be put where ~~the question is substantially the same as a question put at a meeting of the Council within the preceding six months or the question appears~~ defamatory, vexatious or requires the disclosure of confidential or exempt information.'*

This will allow members who have follow on questions or questions that are similar to have an opportunity to put their question and aid discussion.

It is suggested the words are deleted as outlined above.

2.08 Rule 18 of the CPR's is in relation to the Rules of Debate. This amendment is to reflect current practice and allows for flexibility in terms of who presents the budget speech. CPR 18 (6) currently states:-
No speech of a Member of the Council in moving a motion to adopt the report of Cabinet or a Committee, or a motion under Rule 14 shall exceed 10 minutes and no other speech on any item before Council shall exceed 5 minutes, except:-
(a) by consent of the Council, or

*(b) the Leader, **or the Leader's nominee** annual budget speech on the setting of the amounts of Council Tax.*

2.09 CPR 19(3) currently states:

*'An amendment to a motion proposed under paragraph (1) above, cannot be moved unless it has been **submitted and deemed to be financially sound and sustainable** by the Chief Executive no later than 7 days prior to the date of the Budget Meeting. The Notice of such an amendment must be delivered to the Chief Executive and must specify the terms of the proposed amendment and the effect which it will have on the draft Revenue Budget.*

Amendments to the Budget Motion cannot be accepted unless the Chief Executive is satisfied, upon the advice of the Service Director - Finance, Information and Transactional Services, that the proposed amendment is financially sound and sustainable.'

The proposed change is to delete and add the words in bold outlined above. This is to make the requirements regarding amendments clear and it is understood that they are required (within the 7 days) to be both:-

- i) submitted and
- ii) the Chief Executive satisfied that they are financially sustainable

2.10 CPR 19 (4) currently states:

'The Chief Executive shall inform all Members of the Council of any amendments received'

It is suggested to reflect current practice that the following words are added followed the word received '**..and the order of receipt. The amendments shall be considered at the meeting in the same order that they have been received by the Chief Executive..'**

2.11 CPR 19(5) currently states:

Debating the Motion and Amendments

(5) (i) The Mover of any Amendment to the Budget Motion shall speak for no longer than ten minutes, or for the same time taken by the Mover of the Budget Motion, whichever is the longer.

(ii) If a motion or an amendment described in paragraph (1), (2) and (3) above is not carried at the Council meeting, further motions and amendments may be moved and seconded without notice for consideration and determination. Copies of these additional motions or amendments must be made available to each Member of the Council by the mover or seconder before any debate begins.

(iii) In the event that an amendment is approved, thereby becoming the substantive motion, this resolution shall become the Council's budget and no further amendments shall be debated or voted upon.

It is suggested the following words are inserted to provide flexibility to aid debate and discussion when responding to budget motions and amendments

(iv) In order to engage in a full debate about the Budget and amendments these rules will allow reference to be made by a member, to published material by a political group related to the budget.

2.12 CPR 35 refers to the Appointment of Committees, Sub-Committees and Panels. Section 35 (2) is set out below:

(2) *The Council subject to any statutory provision:-*

- (i) *Shall not appoint any Member of the Committee so as to hold office later than the next Annual Meeting of the Council;*
- (ii) *May at any time dissolve a Committee, or alter its membership*
- (iii) *Shall not appoint the Leader, the Deputy Leader of the Council or any Members of the Cabinet as Members of the Overview and Scrutiny Committee or its Panels*

Following the consideration given throughout the year to the change in approach to DBS checks, it is suggested the following words are added

- (iv) ***Shall require the post holders of Scrutiny Lead Panel Members – Children (including those who attend Children Homes Regulations 44 visits) and Adoption Panel Members to undertake an Enhanced DBS check in accordance with the DBS policy***

As referred at 2.03 a policy will be drafted by the Monitoring Officer that will provide a framework and set out guidance, procedures and relevant legislation.

2.13 CPR 37 currently states:

'Any member of the public attending a meeting of the Council (with the exception of the Annual Meeting or the Budget Council) a Committee, Sub-Committee, or Panel (or any other meeting open to the public) may, with the permission of the Mayor/Chair, speak on any item of business to be transacted at that meeting. This speaking right shall not apply to persons who have presented a deputation on the same subject matter at the same meeting. That person shall not be permitted to remain in the meeting when consideration is being given to confidential or exempt information.'

The suggested changes are proposed so that it is clear to the public that they don't have individual speaking rights on particular items unlike attending Cabinet for example. At Council meetings the speaking is limited to deputations and petitions, unless express permission is proved as per above.

2.14 Access to Information Procedure Rules

This has been reviewed during the year and will be updated to reflect some changes in legislation and bring the rules up to date.

2.15 Budget and Policy Framework Rules

This is part of a wider piece of work which is under consideration and is currently being reviewed but there are no proposed amendments this year.

2.16 Executive Procedure Rules

This has been updated using the MO delegation to reflect the new officer titles. No further changes are proposed.

2.17 Financial Procedure Rules

There are proposed amendments and these will be the subject of a separate report to this committee

2.18 Contract Procedure Rules**

There is usually a separate report on Contract Procedure Rule changes. This year however, there are no substantive amendments requiring a separate report.

The rules have been reviewed and updated with some minor amendments to titles following the senior management restructure and updating of the EU threshold figures, for both procedural and numerical purposes. Every two years and most recently on 1st January 2018 the English legislation resets its thresholds at the exchange rate then applicable.

The proposed changes are set out in Appendix D.

2.19 Overview and Scrutiny Procedure Rules**

Following changes in relation to the structure of Scrutiny a piece of work was commissioned in 2015 by the Corporate, Governance and Audit committee to consider practice elsewhere and the development of options linked to the approach of scrutiny in Kirklees.

Following a report to CGA on 9 March 2018 a number of requirements were proposed as changes to support the principles of scrutiny. The committee did approve most of the recommendations made. A copy of the report is included at Appendix G for information. This committee recommended that Council approve the following:

(1) *That the call in proforma be amended to include a section where a signatory may set out, where appropriate, any steps they have taken to try to resolve their concerns prior to calling in the cabinet decision.*

(2) *That the Scrutiny Procedure Rules in the Constitution be amended to clarify that supporting evidence and reasons to illustrate how the decision making principle(s) has been breached should be included in the call in request. Officers to amend the call in proforma to allow for evidence to be included.*

(3) *That the decision making principles in Article 13 of the constitution, as set out in appendix 2 of the report, be simplified in line with good practice and to ensure clarity of interpretation.*

(4) *That the decision about the validity of a call in request will be determined by the Service Director, Legal, Governance and Commissioning in consultation with the Chair of Overview and Scrutiny*

(5) *That any required amendments to the constitution will be considered at the*

Annual Council Meeting.

The CGA committee **members are asked to agree the recommendations by this committee on 9th March and to approve the amended overview and scrutiny procedure rules attached at Appendix E.**

2.20 Officer Employment Procedure Rules

These have been updated during the year and the changes are set out within Appendix A.

PART 5 – CODES and PROTOCOLS

2.21 This section sets out the Council's Codes and Protocols in relation to a number of areas.

2.22 Members Code of Conduct

The Members Code of Conduct has been subject to a Standards Review and recent updates to the code were approved by full Council on 26 April 2017. This has been reviewed and no changes are necessary.

2.23 Monitoring Officer Protocol

This has been reviewed and no changes are necessary.

2.24 Protocol for Planning Committees and Sub-Committees

This has been reviewed and no changes are necessary.

2.25 Decision Making On Ward Issues – Procedural Advice to Cabinet Members

This will be reviewed during 2018/19 and initially referred back to the Standards Committee for any proposed changes for consideration. Any recommended changes will be presented in a report to CGA and back to Council as appropriate.

2.26 Protocol on the role of Representatives and Key Outside Bodies in representing the interests of the Council**

This has been reviewed during 2018/19 and updated, however, will be considered as part of a wider review during 2018/19. The proposed changes are set out in the attached Appendix F.

2.27 Officers Code of Conduct

This requires more comprehensive updating and will be subject to further report during 2018/19.

2.28 Protocol for Public Speaking at Planning Committees and Sub-Committees

This has been reviewed and no changes are necessary.

2.29 Licensing and Safety Committee Protocol

This has been reviewed following changes made to the statutory guidance and updated using the MO delegation to reflect new legislation and to bring it up to date.

2.30 Councillors and Officers in Kirklees – A Protocol for Working Effectively

No changes are proposed.

2.31 Safeguarding Protocol

No changes are proposed

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 Other implications (Financial, legal etc...)

It is essential the Council's Constitution is regularly reviewed and updated to ensure that it remains fit for purpose and to enable Council meetings to be conducted in a fair, business like and effective manner. It is also essential that the Constitution complies with current legislation. Failure to do so could lead to challenges, unnecessary procedural delays and less transparency in the Council's democratic process.

4. Consultees and their opinions

The Chief Executive and various officers in Legal, Governance and Commissioning have been consulted. The Leader and the changes to DBS checks has been discussed on a number of occasions with Group Business Managers and at the Chief Executive's meeting with Leading Members.

5. Next steps

- 5.1 This report will be considered by Annual Council on 23 May 2018. Any feedback or comments from CGA will be included in that report.
- 5.2 Any amendments agreed by Council will be made to the Constitution.

6. Officer recommendations and reasons

That CGA:-

- a. Agree the proposed changes set out in the paragraphs marked with a double asterix at [2.04, 2.07, 2.08, 2.09, 2.10, 2.11, 2.12, 2.13, 2.18, 2.19 and 2.26] and the accompanying relevant Appendices and recommend them for approval and/or make any comments/observations on them for considerations by Council.
- b. Recommend to Council to delegate authority to the Service Director – Legal, Governance and Commissioning to make appropriate amendments to the constitution which are agreed by Council as well as any consequential amendments to the constitution to reflect the changes agreed.
- c. Recommend to Council to delegate authority to the Service Director to draft the DBS Policy as referred to in paragraphs 2.03 and 2.12.

7. Cabinet portfolio holder recommendation

N/A

8. Contact officer

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9. Background Papers and History of Decisions

N/A

10. Service Director responsible

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11. Appendices

Appendices

Appendix A - Amendments 2017/18 (Information only)

Appendix B – Article 7 – The Executive (Information only)

Appendix C – Article 13 – Decision Making Principles

Appendix D – Contract Procedure Rules

Appendix E – Overview and Scrutiny Procedure Rules

Appendix F – Protocol on Representatives on Outside Bodies

Appendix G – Report on Amendment Options for the Scrutiny Call-in Process