

Name of meeting: Corporate Governance and Audit Committee (Reference to Annual Council)

Date: 12th May 2023

Title of report: 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.

To also provide a summary of changes to the Constitution made by the Monitoring Officer using delegated powers.

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?	NO
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	NO
The Decision - Is it eligible for call in by Scrutiny?	NO
Date signed off by <u>Strategic Director</u> & name	Yes – Rachel Spencer-Henshall
Is it also signed off by the Service Director for Finance?	Yes – Eamonn Croston
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Yes – Julie Muscroft
Cabinet member portfolio	Cllr Paul Davies

Electoral wards affected: All

Ward councillors consulted: NO

Public or private: Public

Has GDPR been considered? YES

1. Summary

- 1.1 This report will cover any changes proposed as well as any amendments made since 2022, both on the authority of Council and by the Monitoring Officer using delegated powers.
- 1.2 The report will set out, in section 2, the proposed changes in relation to the different parts of the Constitution and to seek approval by members of those proposed changes. Each section of the Constitution is set out below with information setting out details of the proposed change for which approval and/or comment is sought.
- 1.3 There have been some changes using delegated authority granted to the Monitoring Officer by Council on 20th 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 1** for information and members are asked to note those changes.

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 current proposed changes.

PART 2 – ARTICLES

- 2.02 There are 16 articles that set out how the council operates.
- 2.03 There are proposed amendments to **Article 4**.
- 2.04 The Policy Framework is the list of plans, policies and strategies that require formal sign-off and adoption by Full Council. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 set out several plans and strategies that if they are produced, can only be approved or amended by Full Council. The Secretary of State at the time also recommended that local authorities should consider other significant plans and strategies for approval or adoption by Full Council.
- 2.05 In Kirklees, the Full Council's Policy Framework is the current list of strategies, policies, and plans that, if produced, require approval or adopted at Full Council and is attached at **Appendix 2**.
- 2.06 Over the last two decades, the number of strategies and plans requiring this approach has changed significantly due to changes in legislation as well as numerous pushes by successive governments to try and reduce the bureaucratic burden on local authorities through removing national targets and objectives. Therefore, the Framework has had minor amends in recent years but has been largely unchanged for eight years.
- 2.07 Taking account of the above information and context, the

proposal is to refocus the Policy Framework, focusing on our highest-level strategies, policies and plans which set the context and direction for delivering Our Shared Outcomes, other strategic plans and programmes as well as continuing to include plans that by law must be adopted at Full Council (e.g., the Licensing Policy and Youth Justice Plan). The proposed new Policy Framework is set out at **Appendix 2**.

- 2.08 The reasons for the proposed amendments are to address a number of areas including accuracy, legislative requirements, pressure on the Council agenda and pressure on resources. Some of the plans are no longer produced or have been superseded by other documents, e.g. Early Learning and Childcare 2011-2014 and the Climate Change and Fuel Poverty Strategy. The current Policy Framework is therefore out of date and does not accurately describe the most important strategies, policies, and plans we produce. Legislative and national policy changes mean the number of strategies and plans requiring approval or adoption by Full Council has reduced significantly. This means the current Policy Framework is larger than currently legally required.
- 2.09 The number of plans on the Policy Framework (currently 20 items) causes or risks unnecessary pressure on Council agendas. The proposal is to reduce the potential pressure on Council agendas and prevent plans appearing at Council by 'default'.
- 2.10 Preparing for a decision at Full Council is a significant expenditure of officer time and is not the most effective way of securing cross-party engagement. This is better done pre-decision through portfolio briefings, scrutiny, group meetings, wider consultation such as place partnerships meetings, and individual member engagement.
- 2.11 Removing an item from the Policy Framework does not mean it cannot or will not be discussed or decided at Full Council. Cabinet can still refer any strategy, policy, or plan to Full Council. The proposal is only to remove the constitutional requirement that they are approved or adopted at Full Council due to the reasons and context outlined above.
- 2.12 There are proposed amendments to **Article 14**. These amendments are to allow a future adoption of 'DocuSign', as a means of electronic sealing.
- 2.13 The proposed amendments are in red below:

14.4 Authentication of documents for Legal Proceedings or procedures

Where attestation of any document is necessary to any legal proceedings or legal procedure [contemplated by Article 14.3], it will be signed by the Service Director – Legal, Governance, and Commissioning or another person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

14.4.1 A document shall have been properly signed in accordance with Article 14.2 and Article 14.4 where it is physically signed in hardcopy format or it is signed electronically in an electronic format.

14.5 Common Seal of the council

The Common Seal of the Council will be kept in a safe place in the custody of the Service Director – Legal, Governance and Commissioning. A decision of the Council, or of any part of it made with statutory or delegated authority, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Service Director – Legal, Governance and Commissioning should be sealed. The affixing of the Common Seal will be attested by:-

- the Service Director – Legal, Governance and Commissioning or
- any other Legal Officer nominated by the Service Director Legal, Governance and Commissioning

An entry of sealing of a document shall be made and consecutively numbered in a sealing book or an electronic sealing register.

The Common Seal shall be properly affixed in accordance with Article 14.5 whether it is physically affixed to a hard copy document or it is affixed electronically to an electronic document where the law permits in accordance with the Electronic Communications Act 2000.

The common seal may be affixed without further authority from the Council:

- a. to any mortgage, bond or other security for money advanced to the council;
- b. to any transfer of stock or bonds purchased or sold on behalf of the council;
- c. to any release or re-assignment of any mortgage or other security given to the council for any advance made by the council on repayment of the whole of the money thereby secured;
- d. to any proxy forms or transfer of any investment of funds of the council;
- e. to any grants of exclusive rights of burial and grants of exclusive rights of depositing ashes or cremated bodies in graves.

PART 3 - RESPONSIBILITY FOR FUNCTIONS

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

2.15 It is proposed to amend the 3rd term of reference for the Regulatory Panel of the Licensing and Safety Committee to clarify and introduce a specific reference to Sexual Entertainment Venue licensing:

3. Power to issue ~~entertainment~~ licences to sexual entertainment venues

2.16 It is proposed to make some amendments to the financial limits set out in the Scheme of Delegation to Officers in Section F. As these are changes to executive powers these are for committee and council to note.

The proposals reflect the fact that these figures have not been increased for some time and to do so will reduce the need for reporting to Cabinet.

These relate to the functions of the Strategic Director Growth and Regeneration, It is proposed to amend the functions relating to Asset Management as follows, with changes in red:

F. Asset Management

Executive Functions

Discharge of all functions and responsibilities of the Council relating to its Asset Management including, but not limited to:

- (a) Asset management;*
- (b) Corporate Landlord;*
- (c) Capital development;*
- (d) Capital construction delivery;*
- (e) Building Services.*

And not by virtue of any legislation present or future prevented from being the responsibility of the Executive or required by legislation to be carried out by full Council together with any local choice functions set out within Section A of this Part that have been allocated to the Executive subject to the exceptions that:

Matters are referred to the Executive in the following cases:

As specified in paragraph 3 of the General Provisions above;

- (a) Payment of disturbance payments to tenants exceeding ~~£10,000~~ 50,000;*
- (b) Approval of heads of terms for the disposal of any rights, estates or interests in land and property of the Council where the estimate of value exceeds ~~£500,000~~ 1,000,000;*
- (c) Approval of heads of terms for the acquisition of rights in and estates in land and property in cases where the purchase price or consideration exceeds ~~£500,000~~ 1,000,000;*
- (d) Disposal of any Council interests in public or quasi open space, common land or village greens where objections to the proposed disposal have been received from members of the public; and*
- (e) Decisions to submit planning applications relating to land and property owned or to be acquired by the Council in circumstances where ward members have been consulted and have made adverse comments.*

Changes to the above will also necessitate a change to the Cabinet Local Issues Committee terms of reference to reflect the increased reporting levels. These are in Section C of the Constitution. The change to the terms of reference is in red below:

- ii. To consider reports on disposals of Council assets, with a capital value not exceeding ~~£500,000~~ 1,000,000, that have previously been approved by officers.*

- 2.17 Online auctions are being used more regularly and in order to facilitate online auctions for sale of property it is proposed that the Scheme of delegation to Officers in part 3.7 of the constitution is amended to add the following to the scheme of delegation of the Monitoring Officer (Service Director -Legal,

Governance and Commissioning) to authorise an external property auctioneer to sign as agent for the Council. This is for committee to note.

“to authorise an external property auctioneer to sign as agent for the Council , a Sale Memorandum to record the property price and terms of conditions of sale .”

This is also added to the Contract Procedure Rules for consistency and is picked up in the report dealing with such changes on this meeting agenda.

PART 4 – RULES OF PROCEDURE

- 2.18 This section contains eight documents which describe how Councillors and Officers conduct themselves in meetings and make decisions about certain matters.
- 2.19 The changes are as a result of considered review of the rules with learning from previous meetings, officer recommendations and consideration of other authorities regionally to ensure the meeting is properly focused and that time is used effectively to enable robust debate and business to be conducted in a timely fashion.
- 2.20 The Council procedure rules encompass the format and procedures for Council meetings and have been updated and amended each year. Over time it has become even more important that the limited time available for such meetings should be used in the most efficient and effective way to provide access to democracy for citizens and to ensure the business of the authority is properly debated and transacted. The proposed changes to the Council procedure rules are attached at **Appendix 3** but are described below.

The Council Procedure Rules

- 2.21 By comparison to many Councils, the Kirklees constitution is particularly permissive and open. The aim of the proposed changes is to balance access to democracy and improve outcomes for citizens whilst allowing effective and timely focus on council business at Council meetings.

Deputations

- 2.22 The changes proposed in **Appendix 3** are to ensure there is streamlining of processes to allow officers time to process and manage the business at meetings. In addition, they will continue to allow time for citizens to bring a question or deputation but also provides some additional parameters and earlier notice provision to ensure that citizens are provided with the best information available, as more time will be available to deliver a full and detailed response to questions and deputations and to provide advice/ guidance on the appropriate content of deputations. The amendments will provide for citizens to be referred to the most appropriate forum or body to ensure they are provided with the most suitable and

accurate response, whether that be a different committee, scrutiny panel or complaints response.

- 2.23 This will enable citizens to have clear answers to issues raised in the relevant forum and will also allow for wider engagement across the authority and its committees including scrutiny. It will provide greater emphasis on appropriate, timely citizen engagement as part of policy development and decision-making process.
- 2.24 The proposed changes to deputations and notice requirements will require submission of the deputation in advance so this can be considered carefully to ensure they i) meet the criteria set out within the rules ii) to ensure it is the correct forum for an answer to their submission iii) to ensure they are not providing factually incorrect information and iv) to ensure they are not providing personally identifiable information, all of which has recently occurred. The 10 working days provide additional time to manage the process, prepare and advise the public, consider against the criteria and is regionally in line with other local authorities.
- 2.25 Within West Yorkshire (and Rochdale), no authority allows both deputations and public questions at Council meetings. Bradford provides an additional requirement that all deputations must be accompanied by 20 signatures. There is also a larger amount of notice required in order to process deputations by officers which impacts on resource and capacity.

Other Local Authorities

	Kirklees	Bradford	Calderdale	Leeds	Wakefield	Rochdale
Both Deputations and Public Questions	Y	N	N	N	N	N
Notice for Deputations	24 hrs	3 working days and **	No deputations	14 days	7 days	No deputations
Notice for Public Questions	None	7 days	7 days	No Public Questions	No Public Questions	10 days
Unlimited deputations	Y	Maximum 5	-	Maximum 5	Maximum 2	-

** Must be signed by a minimum of 20 residents

- 2.26 It is proposed that **CPR10** be amended and replaced by the wording set out in the table attached at **Appendix 3**.
- 2.27 The proposed changes are to provide additional working days notice to 10 working days, add clarity to the process, and a maximum number of deputations to help manage time at meetings and the rationale set out at paragraphs 2.23 – 2.26.

Public Questions

- 2.28 Whilst some other Councils do not have both public questions and deputations we are not proposing any changes in this regard. However, it is proposed that **CPR 11(1)** be amended by the addition of a new paragraph (d), requiring 7 working days notice, set out within **Appendix 3**:
- 2.29 This will enable the time management of the meeting and will allow a period of time for the question to be assessed in accordance with the criteria at **CPR11**, which will allow the member of the public to be given a sufficient period of notice in the event that their question cannot be accepted.
- 2.30 Allowing additional notice for submission of the question also provides citizens time to give more thought to the questions and enables them to receive a fuller response as the majority of questions received are asked on an impromptu basis.

Written Questions

- 2.31 It is proposed that **CPR 12(1)** be amended to reflect that 'Any Member of the Council may submit up to three written questions ...' and is set out within **Appendix 3**.
- 2.32 This will enable the opportunity for more Members to be able to put questions during the time available in the meeting.
- 2.33 It is also proposed that all Written Questions be submitted at least **seven** clear working days prior to the meeting.
- 2.34 This will allow more time for the questions to be processed and circulated by governance prior to the meeting.

Motions

- 2.35 It is proposed that **CPR 14(1)** be further amended to require submission of motions to Council to be made by 9:00 am on the 8th working day before the meeting of Council and is set out in **Appendix 3**.
- 2.36 This would be a change from the current requirement of the 6th working day. The current deadline is the same day as the legal requirement for agenda publication and so provides very limited opportunity for Councillors who may submit a Motion to make any necessary changes once it has been assessed against criteria.

- 2.37 It will provide additional time for Officers to liaise with Councillors and will assist with the governance of issuing agenda papers.
- 2.38 It is proposed that **CPR 14(11)** be amended to require amendments to motions to be submitted by 10.00 am the day prior to the meeting of Council, to read:.

'Any proposed amendment to a Motion which has been included in the summons for a meeting, shall be delivered to the Service Director – Legal, Governance and Commissioning no later than 10.00am on the day prior to the Council Meeting.'

CPR 14.11 (a) and (b) shall be deleted.

- 2.39 The current deadline is the same day as the meeting and so provides very limited opportunity for Officers to assess the content, which impacts upon the period of notice given to Councillors to make any necessary changes that may be considered to be necessary.
- 2.40 The proposed change will provide additional time for Officers to liaise with Councillors regarding the finalised wording of any amendment.
- 2.41 It is proposed to remove **CPR 51(10)**
- 2.42 This was a temporary arrangement during covid requiring the submission of written questions at remote meetings and including the process, which is no longer necessary.. The full proposed deleted paragraph is contained in **Appendix 3**.
- 2.43 There are a number of other small amendments highlighted in Appendix 3 at CPR 11, 14(1), 14(2), 35(7), which are drafting amendments to be picked up by the Monitoring officer using her delegation and to be noted by members.

Access to Information Procedure Rules

- 2.44 It is proposed that the final paragraph of **part 6** is removed. It currently reads:

'The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.'

- 2.45 This involves printing papers that are not used and all council meeting papers are available online. If copies are requested on the day, these can be printed or access provided on a device.
- 2.46 It is proposed to amend **part 14.2** to increase the monetary KDN value from

£250k to £500k.

- 2.47 The KDN value was adopted in 2002 and was the figure used by most Councils at the time as being a suitable figure. Most Councils have now changed the figure and looking regionally is between £500k and £1m.

	Current Key Decision Notice figure
Calderdale	£200k moving to £500k
Bradford	£250k
Wakefield	£275k
Rotherham	£400k
Leeds	£500K
York, Barnsley, North Yorkshire	£500k
Sheffield and Manchester	£500k
WYCA	£1 million

- 2.48 It is also proposed to move **part 14.6** up to **14.2** to add clarity.

- 2.49 It is proposed to include a further exception to **paragraph 14.2**. This does not provide any changes and is already referred to within the Financial Procedure Rules but clarifies the position in relation to Key Decisions and links the rules which should be read in conjunction. The additional wording proposed '*Grants to and from the Council and loans from the Council (in accordance with Financial Procedure Rules)*'.

2.50 Budget and Policy Framework Rules

There are no proposed amendments to these Rules

2.51 Executive Procedure Rules

There are no proposed amendments to these rules.

2.52 Financial Procedure Rules

A separate report is on this agenda which considers changes to the Rules.

2.53 Contract Procedure Rules

A separate report is on this agenda which considers changes to the Rules

2.54 Overview and Scrutiny Procedure Rules

There are proposed amendment to the Scrutiny panels and these will be subject to a separate report to this Committee and Council.

2.55 Officer Employment Procedure Rules

There are no proposed amendments to these rules.

PART 5 – CODES and PROTOCOLS

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

2.57 Members Code of Conduct

There are presently no proposed amendments to the Code of Conduct.

2.58 Monitoring Officer Protocol

There are no proposed amendments to this protocol.

2.59 Protocol for Planning Committees and Sub-Committees

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

2.62 Officers Code of Conduct

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

2.64 Licensing and Safety Committee Protocol

There are no proposed amendments to this protocol.

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

There are no proposed amendments to this protocol.

However, the working relationship between members and officers was the subject of some recent work, that involved member participation.

The work is on-going and any proposed amendments will be considered by Standards Committee, before being considered at Corporate Governance and Audit and coming back to Council (as necessary) with any amendments.

2.66 Safeguarding Protocol

There are no proposed amendments to this protocol.

2.67 Protocol for Online Meetings

This Protocol was added to the Constitution as a result of the legislative changes on remote meetings made in response to the Covid 19 lockdown, so that Council business could still be transacted.

Whilst the protocol is no longer applicable to many meetings, some may still be lawfully held remotely, such as Licensing Panel meetings, and it is proposed to retain this, rather than remove it. There is a current campaign aimed at persuading the government to legislate to make virtual meetings lawful and, should this happen, the protocol would be needed.

2.68 Concurrent Functions Protocol

There are no proposed amendments to this protocol.

3 Implications for the Council

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.

3.01 Working with people

N/A

3.02 Working with Partners

N/A

N/A

3.03 Place Based Working

N/A

3.04 Climate Change and Air Quality

N/A

3.04 Improving Outcomes for Children

N/A

3.06 Financial Implications for the people living or working in Kirklees

3.07 Other (eg Integrated Impact Assessment/Legal/Financial or Human Resources)

N/A

4 Consultees and their opinions

Various officers have been consulted.

5 Next steps and timelines

5.03 This will be considered by Annual Council on May 24th 2023. Any feedback, comments or recommendations from this committee will be included in the report to Annual Council.

5.04 Any amendments agreed by Council will be made to the Constitution.

6 Officer recommendations and reasons

That it be recommended that CGA:-

- a. Notes the changes made to the Constitution in 2022-2023 listed in Appendix 1
- b. Approves the proposed changes to the Councils constitution as set out in paragraphs 2.07, 2.13, 2.15, 2.21 – 2.42, 2.44 and 2.46 and the accompanying relevant Appendices.
- c. Notes the changes set out at paragraphs 2.16, 2.17, 2.43, 2.48 and 2.49.
- d. Notes that work will continue to keep the Council's Constitution under review.
- e. Notes the proposed further work in relation to the Member Officer protocol in paragraph 2.65
- f. Recommends to Council that they note and approve (as applicable) the above recommendations and delegate authority to the Service Director – Legal, Governance and Commissioning to make appropriate amendments to the constitution which may be agreed by Council as well as any consequential amendments to the constitution to reflect the changes agreed.

7 Cabinet portfolio holder recommendation

N/A

8 Contact officer

Julie Muscroft – Service Director – Legal, Governance and
Commissioning
01484 221 000

9 Background Papers and History of Decisions

10 Service Director responsible

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11 Appendices

Appendix 1 - Amendments 2022-2023 (Information only)

Appendix 2 – Current and Proposed Article 4

Appendix 3 – Proposed Changes to Council Procedure Rules

APPENDIX 1

Constitutional amendments

2022-2023 Changes made to the Constitution authorised by Council or by the Monitoring Officer under the delegation provided to her are set out in the table below.

Amendment	Authorisation	Date amended
PART 2 Articles of the Constitution		
Part 2 – updates to Article 4	Monitoring Officer Delegation	26 th July 2022
PART 3 Responsibility for Functions		
Part 3 Section B	Monitoring Officer Delegation	13 th July 2022
Part 3 Section B – CGA ToR	Monitoring Officer Delegation	21 st April 2023
Part 3.4 Section C Responsibility for Executive Functions	Approved at Annual Council 25 May	16 th June 2022
Part 3.4 Section C Responsibility for Executive Functions	Monitoring Officer Delegation	28 th June 2022
Part 3.4 Section C Responsibility for Executive Functions	Monitoring Officer Delegation	8 th November 2022
PART 4 Rules of Procedure		
Part 4.1 Council Procedure Rules	Monitoring Officer Delegation	29 th June 2022
Part 4.6 Financial Procedure Rules	Approved at Annual Council 25 May	26 th May 2022
Part 4.7 Contract Procedure Rules	Approved at Annual Council 25 May	25 th May 2022