

Committee Name and Date of Committee Meeting

Council – 22 May 2019

Report Title

Annual Review and Adoption of the Constitution

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Shokat Lal, Assistant Chief Executive

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

Good governance has been a core tenet of the Council's improvement journey in recent years. The Constitution has been subject to external review and significant changes have been made to the way in which proposals are developed by Members and officers and how decisions are made across the authority. As the Constitution is the document that empowers the authority to discharge its statutory and discretionary responsibilities, it is important that its provisions are reviewed and changes made to strengthen the Council's governance and accountability arrangements.

This report is submitted to enable the Council to approve the Constitution for the 2019-20 municipal year and adopt amendments to various provisions which are detailed throughout the paper.

Recommendations

1. That the Constitution of Rotherham Metropolitan Borough Council be adopted for the 2019-20 municipal year.
2. That the Overview and Scrutiny Procedure Rule 14.2 be amended so as to enable public questions to be submitted to the Chairperson of the Overview and Scrutiny Management Board or Select Commissions in respect of matters to be considered on the agenda for the meeting at which they are in attendance.

3. That a new Council Procedure Rule 8(2) be inserted to establish a procedure for the designation of a Mayor-Elect and Deputy Mayor-Elect at the final meeting of the Council in a municipal year.
4. That a new Council Procedure Rule 10(10) be inserted to establish a procedure for Members to ask questions in respect of the minutes reported to Council of meetings of the Cabinet and committees and for such questions to be responded to by the Leader of the Council, relevant Cabinet Member or Chairperson.
5. That the word limit for general questions submitted by Members under Council Procedure Rule 11 be increased from 50 words to 60 words.
6. That Council Procedure Rule 11(8) be amended to provide for the number of verbal questions asked under Council Procedure Rule 11 to be limited to a maximum of ten verbal questions per Member, with an equal number of supplementary questions, with written responses to be provided for all other questions submitted.
7. That the word limit for questions submitted by members of the public under Council Procedure Rule 12 be increased from 50 words to 60 words.
8. That the Council's Petition Scheme be amended to:
 - (a) Require that petitions be addressed to the Council, rather than specific Members or officers.
 - (b) Define vexatious petitions and how a petition will be deemed vexatious by the Monitoring Officer
 - (c) Remove the provision for Lead Petitioners to request the Overview and Scrutiny Management Board to review responses to petitions and confirm that such requests should be referred to the Council's Complaints Procedures.
9. That Officer Employment Procedure Rules and Officer Code of Conduct be amended, as set out in Appendix 3.
10. That the terms of reference of the Employment Appeals Panel, Audit Committee, Health and Wellbeing Board, Staffing Committee and Chief Officer Disciplinary Panel be amended, as set out in Appendix 4.
11. That authority be delegated to the Monitoring Officer and Head of Democratic Services to make any minor consequential amendments to the Constitution arising from any changes made in the recommendations above.

List of Appendices Included

- Appendix 1 Tracked Changes – Overview and Scrutiny Procedure Rules
- Appendix 2 Tracked Changes – Council Procedure Rules
- Appendix 3 Tracked Changes – Petition Scheme
- Appendix 4 Tracked Changes – Responsibility for Functions

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

Yes

Exempt from the Press and Public

No

Annual Review and Adoption of the Constitution

1. Background

- 1.1 The Council has undertaken a thorough review of the Constitution since 2016, with each Appendix being subject to amendment since that time. The Council has done much to increase accountability, openness and transparency over that period with the introduction of new provisions on the Council agenda to:-
- allow for the presentation of petitions containing 20 or more signatures
 - reduce the threshold for debates on petitions to 2,000 signatures
 - report on achievements in all 21 electoral wards, with each Member having the opportunity to address the meeting
 - report on the work of joint committees across South Yorkshire
 - report on a quarterly basis the work of Overview and Scrutiny
- 1.2 A significant amount of work was undertaken to draft a new Appendix 9 – Responsibility for Functions. This part of the Constitution sets out which body, committee or officer is responsible for the discharge of executive and non-executive functions. The new provisions have become embedded across the authority, resulting in greater clarity for Members and officers.

2. Key Issues

- 2.1 It is considered good practice across local government to undertake an annual review and refresh of the Constitution, with the document being adopted at the Annual Meeting of the Council. The review of the provisions of the Constitution in recent years means that the document is clear and concise and any further changes should be undertaken to further enhance the clarity of governance and democratic processes.
- 2.2 The proposals within this report summarise the recommendations of the Constitution Working Group, a cross party body of Members which is chaired by the Leader of the Council.
- 2.3 The proposed amendments for each part of the Constitution are summarised below:-

Part	Amendment(s) recommended
The Constitution	No amendments proposed
Appendix 1 – Executive Procedure Rules	No amendments proposed
Appendix 2 – Overview and Scrutiny Procedure Rules	To amend Overview and Scrutiny Procedure Rule 14(2) to amend the scope of questions from members of the press and public to concern matters on the agenda for the meeting attended.

Appendix 3 – Access to Information Procedure Rules	No amendments proposed
Appendix 4 – Council Procedure Rules	<ul style="list-style-type: none"> • Insertion of procedure for designation of Mayor-Elect and Deputy Mayor-Elect at the final Council meeting of the municipal year • Insertion of provision for questions to be asked on minutes of Cabinet and committee meetings • Review of Procedure Rule 11 (Questions from Members) – number of verbal questions to be asked at a meeting, increasing the word limit for questions and arrangements for written responses to be included with the minutes at future Council meetings • Review of Council Procedure 12 (Questions from the public) – increasing the word limit for questions. • Review of Petition Scheme and provisions for petitions:- <ul style="list-style-type: none"> ○ Petitions should be directed to the Council and not named Members or officers ○ Clarification of matters excluded under the Council’s petition scheme ○ Removal of the review process by the Overview and Scrutiny Management Board and referral through Council’s Complaints Procedure
Appendix 5 – Finance and Procurement Procedure Rules	No amendments proposed
Appendix 6 – Code of Conduct for Members and Co-opted Members	No amendments proposed
Appendix 7 - Officer Employment Procedure Rules	<ul style="list-style-type: none"> • Review of consistency of terminology used in this and in Appendix 9 – Responsibility for Functions • Update of the Employee Code of Conduct
Appendix 8 – Member Allowances Scheme	No amendments proposed

Appendix 9 – Responsibility for Functions	<ul style="list-style-type: none"> • Increased the membership pool of the Employment Appeals Panel • Review of terms of reference for Staffing Committee • Insertion of terms of reference for Chief Officer Disciplinary Panel • Amendment of terms of reference for Audit Committee • Amend terms of reference for Health and Wellbeing Board
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3. Options considered and recommended proposal

3.1 *Proposed Amendments to Appendix 4 – Council Procedure Rules*

- 3.1.1 At the Council meeting on 27 February 2019, Members recommended that a provision be inserted into the Constitution for the designation of a Mayor-Elect and Deputy Mayor-Elect at the final Council of the municipal year. It is proposed that such a provision be inserted as Council Procedure Rule 8(2), with the existing Rule 8(2) becoming Council Procedure Rule 8(3). The new rules introduces a requirement for nominations to be designated as Mayor-Elect and Deputy Mayor-Elect to be received no later than the deadline of Notice of Motions on the Monday of the week preceding the Council meeting.
- 3.1.2 During the 2018-19 municipal year, the Mayor permitted Members to ask questions on minutes of the Cabinet and committees in the absence of a provision to do so within the Constitution. The Constitution Working Group supported the introduction of a new provision, which will be detailed within Council Procedure Rule 10(10). This rule permits Members to ask questions on the minutes of the Cabinet and committees, with responses being provided by the Leader of the Council, relevant Cabinet Member or the Chairperson of the relevant committee.
- 3.1.3 Council Procedure Rule 11 details the provisions the submission of the questions by Members of the Council to the Leader of the Council, Cabinet Members or Chairpersons of committees. The Constitution Working Group has proposed that the word limit for such questions be increased to 60 words per question, rather than the present limit of 50 words. The proposed amendment can be found in Council Procedure Rule 11(2).
- 3.1.4 Furthermore, the Constitution Working Group reflected on the operation of the provisions on Council Procedure Rule in respect of the number of questions submitted. The working group have proposed that there should not be a limit on the number of questions submitted by Members to the Leader of the Council, Cabinet Members and Chairpersons of committees. However, the working group has recommended that the number of questions verbally asked by an individual Member at a meeting be limited to a maximum of ten, with all other questions submitted being responded to in writing and the response being included for report to Council with the record of the proceedings detailed in the minutes. Such a provision is detailed in Appendix 1 within a new Council

Procedure Rule 11(8)

- 3.1.5 Council Procedure Rule 12 details the provisions for questions to the Leader of the Council, Cabinet Members and Chairpersons of committees from members of the public. Having recommended that the word limit for Member questions be increased from 50 to 60 words, the Constitution Working Group also recommended that the word limit for public questions be similarly increased to 60 words. This change is detailed within Council Procedure Rule 12(3).
- 3.1.6 The Council's Petition Scheme was last reviewed in May 2017, when the present provisions were introduced. Reflecting on the use of the petition scheme since that time, the Constitution Working Group has proposed that the scheme be amended to ensure that petitions are addressed to the Council, rather than individual officers. In addition to this, the Group has recommended that the list of matters that are excluded from the petition scheme be amended to define where petitions will be excluded on the grounds of being vexatious. A new provision has been inserted to read "*A petition will be deemed to be vexatious where, for example but not exclusively, it is manifestly unjustified, inappropriate or improper use of a formal procedure.*" In such cases, the Monitoring Officer will determine whether a matter is vexatious.
- 3.1.7 The Constitution Working Group has also proposed an amendment to ensure that where a petition raises issues of possible competence or misconduct by an officer, the petition will be considered under the council's complaints and/or disciplinary procedures, and not under the petitions scheme.
- 3.1.8 Furthermore, the Working Group has reviewed the present provisions for the review of responses to petitions and the option to seek a review by the Overview and Scrutiny Management Board. Having reflected on the operation and effectiveness of this provision, alongside the workload of the Overview and Scrutiny Management Board, the Working Group has recommended that the scheme be amended to provide an opportunity for lead petitioners to make a complaint via the Council's Complaints Procedure.
- 3.2 ***Proposed Amendments to Appendix 2 – Overview and Scrutiny Procedure Rules***
 - 3.2.1 The Working Group has proposed that the Overview and Scrutiny Procedure Rules be amended to change the provisions in respect of questions from the public at meetings of the Overview and Scrutiny Management Board and the Select Commissions. The Working Group has proposed that Overview and Scrutiny Procedure Rule 14(2) be amended to indicate that questions should relate to the business of the meeting at which they are being asked.
- 3.3 ***Proposed Amendments to Appendix 7 – Officer Employment Procedure Rules***
 - 3.3.1 Appendix 7 of the Constitution details the Officer Employment Procedure Rules and the Employee Code of Conduct. A revised Employee Code of Conduct has been submitted for consideration and can be found at Appendix 2. The amendments to the Code of Conduct have arisen from Internal Audit

reviews.

3.3.2 Further amendments are proposed to ensure consistency of terminology and process with the terms of reference of the Staffing Committee, Appeals Panel, Chief Officer Appointments Panel and Chief Officer Disciplinary Panel. Specific changes have been recommended to remove Officer Employment Procedure Rule 5.6, which duplicates provisions in respect of the appointment of Chief Officers, and Procedure Rules 8.4.4 and 8.6 which govern the Executive objection procedure in respect of disciplinary processes. Furthermore, the Working Group has recommended the amendment of Procedure Rule 8.9 to incorporate the Appeals Panel, which would accord with the Terms of Reference detailed in Appendix 9 – Responsibility for Functions.

3.4 ***Proposed Amendments to Appendix 9 – Responsibility for Functions***

3.4.1 Audit Committee has proposed to amend its Terms of Reference. In May 2018 CIPFA issued an update to their publication Audit Committees – Practical Guidance for Local Authorities and Police. Following the guidance is not a statutory requirement, but is regarded to be essential good practice. The guidance details the purpose of Audit Committees; their core functions and possible wider functions; independence and accountability; and membership and effectiveness. Appendices refer to government guidance; suggested terms of reference; the skills and knowledge framework for audit committee members; and self-assessments of good practice and assess effectiveness. The main changes proposed to the Terms of Reference are as follows:

- They include the extended membership agreed in December 2015.
- A Statement of purpose outlines the role of the committee
- Detailed responsibilities are given for governance, risk and control; internal audit; external audit; financial reporting; treasury management; and accountability.

3.4.2 The Health and Wellbeing Board has recently reviewed its terms of reference. As a committee of the Council, any change to the terms of reference for the Health and Wellbeing Board must be approved and be reflected in the Council's Constitution. The revised terms of reference are incorporated with the revisions set out in Appendix 4 to this report.

3.4.3 The terms of reference for Staffing Committee have been reviewed and amendments are proposed as set out in Appendix 4 of this report. The proposed amendments remove provisions that do not accord with human resources policies and procedures and ensure that the terms of reference are complete. Furthermore, the Constitution Working Group has proposed the insertion of new terms of reference for the Chief Officer Disciplinary Panel, which are included within Appendix 4 to this report. The proposed terms of reference are consistent with the requirements of legislative provisions.

3.4.4 The Constitution Working Group has proposed that the pool of Members appointed for membership of Appeals Panels should be increased. The current pool of Members has experienced a heavy workload and this has seen the Panel become dependent on one Cabinet Member and a handful of other Members to hear all of the appeals in recent times. It is recommended that Members increase the size of the pool to include at least two further Cabinet

Members and up to nine non-executive Members of the Council. This will increase the involvement of non-executive Members whilst ensuring that availability for appeal hearings does not delay processes from being concluded.

4. Consultation on proposal

4.1 The Constitution Working Group was established a cross party body of Members following the completion of the Governance Review in 2016. This working group has overseen the external review of the Constitution since that time. Members of the Working Group have considered and indicated support for all of the proposed amendments to the Constitution.

4.2 The Statutory Officers of the Council have responsibility for overseeing the good governance of the authority. The Chief Executive, Chief Finance Officer and Monitoring Officer have been consulted on the proposed amendments to the Constitution. Their comments have been incorporated into the proposals and the main body of the report.

5. Timetable and Accountability for Implementing this Decision

5.1 The changes to the Constitution will be effective immediately if approved by the Council on 22 May 2019.

5.2 The Monitoring Officer and the Head of Democratic Services are accountable for the implementation of the changes to the Constitution. Where changes are made to the delegation of functions, Strategic Directors will be responsible for ensuring that the discharge of those functions is undertaken according to the provisions of the Constitution.

6. Financial and Procurement Advice and Implications

6.1 Beyond the proposals which directly amend the Finance and Procurement Procedure Rules, there are no specific financial or procurement implications arising from this report.

7. Legal Advice and Implications

7.1 The Council is required to have a Constitution in accordance with the provisions of the Local Government Act 2000. The proposed amendments set out within this report are compliant with the statutory framework for local authority governance. The legal implications of the proposals are detailed earlier in this report.

8. Human Resources Advice and Implications

8.1 There are no human resources implications beyond those detailed earlier in the report in respect of proposed amendments to Officer Employment Procedure Rules and the terms of reference of the Staffing Committee and the Chief Officer Disciplinary Panel set out in Appendix 9 – Responsibility for Functions.

9. Implications for Children and Young People and Vulnerable Adults

9.1 There are no implications for children and young people or vulnerable adults arising from the proposals in this report.

10. Equalities and Human Rights Advice and Implications

10.1 There are no equalities or human rights implications directly arising from this report.

11. Implications for Partners

11.1 Beyond the amendments to the terms of reference of the Health and Wellbeing Board, which have been supported by partner bodies on that committee, there are no implications for partners arising from these proposals.

12. Risks and Mitigation

12.1. The purpose of this report is to present proposals to amend the Council's Constitution to strengthen good governance arrangements across the authority. As such the proposals are intended to reduce risks in respect of governance.

13. Accountable Officers

Sharon Kemp, Chief Executive
Judith Badger, Strategic Director of Finance and Customer Services
Bal Nahal, Head of Legal Services
James McLaughlin, Head of Democratic Services

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive	Sharon Kemp	14/05/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	14/05/19
Assistant Director of Legal Services (Monitoring Officer)	Bal Nahal	14/05/19
Assistant Director of Human Resources (if appropriate)	N/A	N/A
Head of Procurement (if appropriate)	N/A	N/A

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