

**Committee Name and Date of Committee Meeting**

Council – 23 May 2018

**Report Title**

Proposed Amendments to 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**

This report is submitted to recommend the approval of amendments to various parts of the Council's Constitution following the external review of Executive Procedure Rules, Overview and Scrutiny Procedure Rules and Access to Information Procedure Rules undertaken by the Association of Democratic Services Officers (ADSO). The report also proposes a minor amendment to the Council Procedure Rules to clarify and ensure consistency in respect of provisions for invoking a right of reply for proposers of amendments to motions.

The proposals within this report have been reviewed and are supported by the Constitution Working Group, a cross party body of Members. The Council is recommended to approve the amendments to the Constitution, which would take immediate effect.

**Recommendations**

1. That the proposed amendments to the Executive Procedure Rules, Overview and Scrutiny Procedure Rules and Access to Information Procedure Rules be approved.
2. That Council Procedure Rule 18(30) be amended to read: "Once an amendment has been determined, the proposer of the amendment does not have the right of reply at the conclusion of the debate on the original or substantive motion."

3. That authority be delegated to the Assistant Director of Legal Services to make any consequential amendments to the Constitution arising from the changes agreed by Council.

**List of Appendices Included**

Appendix 1 Proposed Executive Procedure Rules  
Appendix 2 Proposed Overview and Scrutiny Procedure Rules  
Appendix 3 Proposed Access to Information Procedure Rules

**Background Papers**

The Council's Constitution  
Recommendations from the Association of Democratic Services Officers

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

Yes

**Exempt from the Press and Public**

No

## **Proposed Amendments to the Constitution**

### **1. Background**

- 1.1 The Council has sought to strengthen its governance arrangements as part of Rotherham's improvement journey and has reviewed various aspects of its Constitution in the past two years. Commencing with the implementation of the recommendations of the Governance Review Working Party in May 2016, the Council has made the changes in respect of:-
- definitions of a Key Decision
  - delegated decision making by officers
  - financial regulations and contract standing orders
- 1.2 One of the recommendations from the Governance Review Working Group was that an external review of the Constitution should be undertaken. The Council commissioned the Association of Democratic Services Officers (ADSO), the national professional body for local authority governance and democratic services, to undertake a review of the following areas of the Constitution:-
- Executive Procedure Rules
  - Overview and Scrutiny Procedure Rules
  - Access to Information Rules
  - Standing Orders
  - Scheme of Delegation
- 1.3 ADSO's recommendations in respect of Standing Orders were accepted by the Council in September 2017 when that part of the Constitution was amended and renamed as Council Procedure Rules. This report is concerned with amendments proposed to the Executive Procedure Rules, Overview and Scrutiny Procedure Rules and Access to Information Procedure Rules. A further report will be submitted to the Council meeting in June 2017 concerning proposed amendments to the Scheme of Delegation.
- 1.4 This report also proposes a minor amendment to the Council's Procedure Rule with the intention of clarifying wording which had been highlighted as unclear previously.

### **2. Key Issues**

#### ***Executive Procedure Rules***

- 2.1 The Executive Procedure Rules govern the conduct of decision making in respect of executive functions (those functions not reserved to the Council or its committees). Along with the Scheme of Delegation, it provides a framework for Member level and delegated officer decision making and sets out how notice of decision making will be given and how such decisions will be taken. In reviewing the Executive Procedure Rules, ADSO considered that there was no requirement to fundamentally alter the existing provisions, but rather that certain parts of the rules could be clarified to improve understanding of their application.

- 2.2 The Constitution Working Group reviewed the recommended amendments from ADSO and recommended their own minor changes to improve the use of wording to enhance the meaning of the rules and their application. Amongst the recommendations made was to ensure that the rules were consistent with the practice of the Forward Plan of Key Decisions covering a rolling three month period (the current rules state two months). Members were also keen to ensure that the rules reflected increased online access to decision making following technological advancements that had been made since the rules were originally drafted.
- 2.3 Schedule 1 of the Executive Procedure Rules has been updated to reflect the changes to Cabinet Portfolios announced by the Leader of the Council on 3 May 2018. Whilst these changes do not require the approval of the Council, these are included with the amended document presented for approval.

### ***Overview and Scrutiny Procedure Rules***

- 2.4 The Overview and Scrutiny Procedure Rules govern the way in which the non-executive Members of the Council undertake the scrutiny function. These rules were updated following the Governance Review in 2016 to provide for the introduction of pre-decision scrutiny within the overall decision making process, but had not been subject to fundamental review for some time. ADSO made a number of recommendations in respect of these rules to remove reference to the relationship with the executive decision making powers of Commissioners. This recommendation was made in the context of the return of all powers, other than children's social care, to local democratic control and the need to ensure that the Constitution was future proofed for the end of government intervention. In addition to this, ADSO recommended that the process for a Member to request the inclusion of an item of business on an agenda be simplified.
- 2.5 The Constitution Working Group supported ADSO's recommendations and made a further recommendation to enshrine the practice of Overview and Scrutiny review reports being submitted to Council and the Cabinet's response to those reports also being submitted to the Council meeting to ensure that all Members had oversight of the value of scrutiny and its impact on the decision making process. Neither ADSO or the Constitution Working Group made any recommendations to alter the terms of reference for the Overview and Scrutiny Management Board or the Select Commissions beyond consequential changes.

### ***Access to Information Procedure Rules***

- 2.6 The Access to Information Procedure Rules govern the rights of Members, the press and public to agendas, reports, minutes and other documents associated with decision making by the Council. ADSO considered that these rules did not require significant amendment and were consistent with examples of good practice at other local authorities.
- 2.7 As with the Executive Procedure Rules, the Constitution Working Group reflected on the availability of agendas, minutes and reports on the Council's website and considered that there was no longer a need to reference the opportunity to purchase printed copies of these documents from the authority.

## ***Council Procedure Rules***

- 2.8 One of the main changes made to the Council Procedure Rules in September 2017 was to introduce a right of reply for proposers of amendments to motions before the Council. This change was made to Council Procedure Rule (CPR) 18(17) in accordance with Council's decision.
- 2.9 CPR 18(30) states that "Following the debate on an amendment to a motion, the proposer of the amendment to the motion does not have the right of reply.", which appears to contradict the provision at CPR 18(17). ADSO have advised that the intention of CPR 18(30) was to be applied to the substantive motion, not to the debate on an amendment. Having agreed that the wording would benefit from clarification, it is proposed that CPR 18(30) be amended to read:

"Once an amendment has been determined, the proposer of the amendment does not have the right of reply at the conclusion of the debate on the original or substantive motion."

### **3. Options considered and recommended proposal**

- 3.1 The Council has committed to review various parts of the Constitution as part of its improvement journey. The proposals set out above in this report have been put forward by ADSO on the basis of strengthening governance arrangements.

### **4. Consultation on proposal**

- 4.1 The Constitution Working Group has been consulted in the development of the proposals submitted to Council for approval.

### **5. Timetable and Accountability for Implementing this Decision**

- 5.1 If Council were minded to approve the recommendations set out above, then the changes to the Constitution could be implemented with immediate effect.
- 5.2 The Assistant Director of Legal Services is responsible for ensuring implementation of the changes once agreed.

### **6. Financial and Procurement Advice and Implications**

- 6.1 The proposed amendments to the Executive, Overview & Scrutiny and Access to Information Rules accord with the changes made to the Financial and Procurement Procedure Rules made in 2017.
- 6.2 There are no further financial or procurement implications arising from the proposed changes to the Constitution.

## **7. Legal Advice and Implications**

- 7.1 As a creature of statute, the Council should require the Constitution to be current and coherent as the key enabling document that enables the authority to exercise its decision making powers and procedures. The changes proposed within this report are compliant with the provisions of the Local Government Act 2000, which introduced the requirement for local authority constitutions, and subsequent legislation which has further strengthened local authority governance.

## **8. Human Resources Advice and Implications**

- 8.1 There are no human resources implications associated with this report.

## **9. Implications for Children and Young People and Vulnerable Adults**

- 9.1 There are no implications for children and young people or vulnerable adults associated with this report.

## **10. Equalities and Human Rights Advice and Implications**

- 10.1 ADSO were asked to consider equalities implications as part of the review of the Constitution and have not identified any negative impacts. In reviewing ADSO's recommendations, the Constitution Working Group had regard to equalities requirements and did not identify issues within the proposals recommended as part of this report. Consequently, there are no equalities or human rights implications arising from the proposals within the report.

## **11. Implications for Partners**

- 11.1 There are no implications for partners arising from the proposed amendments to the Constitution.

## **12. Risks and Mitigation**

- 12.1 As these parts of the Constitution have not been reviewed in full for some time, any update to change their provisions creates the potential for confusion and misunderstanding. Whilst the purpose of making changes to improve the Constitution is to remove confusion and misunderstanding, there are risks in making the changes:

<b>Risk</b>	<b>Mitigation</b>
Members may be unaware of the new procedure rules	Clear communication of the changes is needed  Make them available online  Consider a training programme to explain the effect of the changes

New rules may be unclear or have ambiguities	<p>Monitor the application of the new rules</p> <p>The Monitoring Officer to provide advice and guidance where required</p> <p>Review and revise where required after one year of operation</p>
New rules may have gaps	The Monitoring Officer to issue guidance on an interim basis until the next review addresses the gaps permanently.
External changes (e.g. new legislation)	The Monitoring Officer will ensure that a report is brought forward to propose any necessary changes at the earliest opportunity.

### 13. **Accountable Officer(s)**

Dermot Pearson, Assistant Director of Legal Services and Monitoring Officer  
James McLaughlin, Democratic Services Manager

Approvals obtained on behalf of:-

	<b>Named Officer</b>	<b>Date</b>
Chief Executive		Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Choose an item.	Click here to enter a date.
Assistant Director of Legal Services (Monitoring Officer)	Choose an item.	Click here to enter a date.
Head of Procurement (if appropriate)	Not applicable	
Head of Human Resources (if appropriate)	Not applicable	

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