

Committee Name and Date of Committee Meeting

Council – 19 July 2023

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

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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 a periodic review by the Constitution Working Group.

The proposals within this report have been reviewed and are supported by the Constitution Working Group which is a cross political group of Councillors.

The Council is recommended to approve the amendments to the Constitution.

Recommendations

That Council approve:

1. The Substitution Scheme set out in Paragraph 2.7 be added to the Constitution.
2. The amendments to the Motions process and the Motion/Amendment Flow Chart set out in Appendix 1 be added to the Constitution.
3. The provisions of the Constitution relating to administrative amendments set out in Paragraphs 2.15 and 2.16 be made to the Council's Constitution.
4. The amendments to the Terms of Reference for the Audit Committee set out in Appendix 2.

List of Appendices Included

Appendix 1 Rules of Debate for Motions and Amendments Flow Chart

Appendix 2 Audit Committee - Revised Terms of Reference

Background Papers

- The Council's Constitution
- The report of the Governance Manager, Democratic Services presented to the Constitution Working Group
- The reports of the Assistant Director, Legal Services/Monitoring Officer presented to the Constitution Working Group.

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 continues to seek to strengthen its governance arrangements as part of its continued improvement journey and continues to review all aspects of its Constitution under the oversight of the Constitution Working Group.
- 1.2 Good governance is a core tenet of both the Council's improvement journey and the way the Council now operates. 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 function, it is important that the provisions are reviewed, and changes made to strengthen the Council's governance and accountability arrangements.
- 1.3 This report presents the minor amendments identified through discussions with Members of the Constitution Working Group as means of improving the Council's governance regime as set out in the papers and approved as a part of that process.

2. Key Issues

Substitution Scheme

- 2.1 The proposal is to allow Councillors to nominate substitutes themselves from within their Group. It is felt that this would allow the substitution of Councillors and enable support to be provided from within their Group.
- 2.2 Councillors are appointed to Committees based on nominations from their Groups via the Group Leader further to the Local Government and Housing Act 1989.
- 2.3 There have been various issues which have required that substitute Councillors are able to support colleagues by attending meetings on behalf of colleagues where particular issues arise. These have included maternity leave, illness, vulnerability, among other reasons.
- 2.4 The Council is required to ensure that Committees are Politically Proportionate and therefore substitutions must be from within the same Group as the Councillor who is a member of the Committee.
- 2.5 The present position is that substitutes are not permitted. This has presented a number of issues in the Council being flexible in supporting Councillors as their circumstances change in a temporary way. For this reason, it is not considered that this approach fits with the broader policy context and enables Councillors to support each other.

- 2.6 The proposal is to allow Councillors to nominate substitutes themselves from within their Group. This would allow the substitution of Councillors and enable support to be provided from within their Group.
- 2.7 Should Council approve the change the scheme would be as follows:

Substitute Members

Councillors may nominate substitutes from within their political group for committees, joint committees, sub-committees, working groups and panels (and the Monitoring Officer shall have authority to give effect to those nominations in accordance with this procedure rule), provided that in the case of the:

- (a) Regulatory committees, sub-committees and Audit Committee, substitutes must have received suitable training;*
- (b) Scrutiny committees, all councillors except Cabinet members are permitted to be substitutes*

Notice of substitution (or any cancellation) stating the name of the substitute must be given to Democratic Services before the commencement of the meeting concerned. Notification is for each meeting or until further notice.

If the original appointed member arrives when the meeting is in progress, the substitution will remain effective and the original appointed member will not be allowed to participate in the decision making. It is not possible to substitute for part of a meeting only.

The meeting shall be informed of any substitutions before the commencement of the meeting.

Substitute members have all the powers and duties (including compliance with any mandatory training requirements) of any appointed member but are not able to exercise any special powers or duties exercisable by the appointed member.

Rules of Debate for Motions and Amendments Flowchart

Part 1 – Appendix 4, Procedure Rule 15 – Notices of motions, order of Motions, consideration of motions and unconnected business

- 2.8 It is proposed that the Council meeting Motion/Amendment Flow Chart (Appendix 2) be added to the Constitution to provide a clear guide of the process to be followed when considering a motion and any subsequent amendments.
- 2.9 It is important that the process by which the motions and any subsequent amendments should be considered during the Council meeting is clear,

transparent, and easy to understand for Councillors, officers and members of the public.

- 2.10 Whilst the process is set out within the Council's Constitution in Appendix 4, Council Procedure Rules, the inclusion of a flowchart creates a simplified guide. This will enable Members, Officers and members of the public to understand how the motion, along with any amendments, will be introduced, debated and voted upon during meetings.
- 2.11 In addition, it is proposed to reduce the time permitted for seconding a motion to 5 minutes from the present 10 minutes with the rationale that the main presentation of a motion is with the presentation made by the Councillor proposing the motion.
- 2.12 There will also be administrative changes to the wording in the Constitution to ensure that the approach taken is clear in the wording and to make clear that where those proposing a motion have accepted a proposed amendment prior to the meeting the amendment will be incorporated into the Motion for debate before Council and will therefore not need moving and seconding separately.

Administrative Changes

Part V – Paragraph 18.3

- 2.13 The Constitution currently sets out that “the full Council will only approve changes to the Constitution after considering proposals from the Chief Executive, the Assistant Director of Legal Services and the Strategic Director of Finance and Customer Services. The Assistant Director of Legal Services may make clerical amendments to the Constitution to reflect any changes in legislation or changes in the title and responsibilities of Council officers or bodies without need for reference to the Council.”
- 2.14 The terms of this read as if they are limited to changes relating to legislation and the names of roles of Council Officers or bodies and would not seem to cover clerical amendments such as errors in dates etc in the Constitution. The proposed amendment would remove this ambiguity.

Overview of Changes

- 2.15 Changes to the Constitution will only be approved by Full Council, after consideration of the proposal by the Chief Executive, Monitoring Officer and the Strategic Director of Finance and Customer Services.

If, in the reasonable opinion of the Monitoring Officer, a change is:

- (a) a minor variation; or
- (b) required to be made to remove any inconsistency, ambiguity or typographical correction; or
- (c) required to be made as a result of changes to legislation;
- (d) required to be made so as to put into effect any decision of the Council.

Then the Monitoring Officer may make such a change. Councillors will be advised accordingly.”

- 2.16 It is also proposed to confirm in the Constitution that Council would be required to continue to confirm the Constitution annually.
- 2.17 It should be noted that none of the above affect the role of the Constitution Review Working Group.

Audit Committee

- 2.18 At its meeting on 14th March 2023 The Audit Committee approved proposals to recommend to Council amendments to the Terms of Reference for the Committee. This was considered following updates to the CIPFA Guidance for audit committees and adapted these recommendations for this Council.
- 2.19 Revised Terms of Reference are attached at Appendix 2 and the main changes are:
- The increased number of independent members, from one to two.
 - Paragraph 6 The inclusion of reviews of risk registers, to bring it into line with current practice.
 - Paragraph 8 The review of compliance with CIPFA’s Financial Management Code. (This has previously been considered as part of the paper on the Annual Governance Statement.)
 - Paragraph 13 To deal with any matters referred to the Committee by the Statutory Officers. (previous provision was for s151 officer only.)
 - Paragraph 15 More in-depth review of the Annual Governance Statement.
 - Paragraph 17 Monitoring the arrangements and preparations for financial reporting to ensure that statutory requirements and professional standards can be met. (This has previously been considered as part of a paper from Finance prior to the year-end.)
 - Paragraph 22 To receive reports on progress in implementing actions from external inspections and audits. (The committee receives reports every six months.)
 - Paragraph 31 The provision of free and unfettered access for the external auditors to the audit committee chair and the opportunity for a private meeting with the committee. (In reality, this has always been the case.)

3. Options considered and recommended proposal

- 3.1 The Council has committed to continue to review the Constitution on an annual basis. The proposals set out above in this report have been put forward through discussion and observation by Members and officers 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.

4.2 In addition, the Audit Committee has proposed the amendments set out in paragraph 2.19 above.

5. Timetable and Accountability for Implementing this Decision

5.1 If Council approves 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/Monitoring Officer is responsible for ensuring implementation of the changes once agreed.

6. Financial and Procurement Advice and Implications

6.1 There are no further financial or procurement implications arising from the proposed changes to the Constitution.

7. Legal Advice and Implications

7.1 As required by 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.

7.2 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 In reviewing all 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 CO₂ Emissions and Climate Change

11.1 There are no implications for CO₂ Emissions and Climate Change arising from this report.

12. Implications for Partners

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

13. Risks and Mitigation

- 13.1 Any update to constitutional procedure creates the potential for confusion and misunderstanding. Mitigations will be put in place to address any such risks.

Risk	Mitigation
Members may be unaware of the new procedure rules	Clear communication of the changes All web pages and online guidance will be updated Member bulletins will be used to further communicate information.
New rules and procedures may be unclear or have ambiguities	Monitor the application of the new rules The Monitoring Officer to provide advice and guidance where required
The public may be unaware of the new procedure rules	All web pages and online guidance will be updated

Accountable Officer(s)

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