

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

14 APRIL 2016

REVIEW OF THE COUNCIL'S CONSTITUTION – PROPOSED REVISIONS TO THE OVERVIEW AND SCRUTINY RULES

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Summary

This report advises Members of proposed changes to the Overview and Scrutiny Rules following a review of the whole Constitution, commissioned by the Portfolio Holder for Corporate Services.

The Committee is asked to consider the proposed revisions which will be recommended to full Council for approval at its meeting on 28 April 2016.

1. Budget and Policy Framework

- 1.1 The Monitoring Officer has an obligation to monitor and keep the operation of the Constitution under review.
- 1.2 Minor changes to the Council's Constitution may be made by the Monitoring Officer under delegated authority with a copy of such changes being supplied to all Group Leaders and Group Whips within 14 days. All other changes must be approved by full Council after consideration of a report from the Monitoring Officer.
- 1.3 This is a matter for the Leader and Cabinet and full Council.

2. Background

- 2.1 The Council's Constitution was adopted in September 2001 and is based largely on the modular Constitution issued by DETR in December 2000. At that time the Council opted for a Leader and Cabinet form of governance which remains the preferred option. There has not been a root and branch review of the whole document since that time, although revisions have been made

periodically in response to legislative change and to suit the changing requirements of the Council.

2.2 On 12 August 2015 the Council approved revisions to the Employment Rules in the Constitution to incorporate changes required by law and to improve layout and presentation. In moving the proposed changes at the Council meeting Councillor Mackness, the Portfolio Holder for Corporate Services announced that he had commissioned a review of the whole Constitution to ensure it is up to date and consistent with current legislation and established practice.

2.3 The scope of the review has been to:

- Identify amendments or updates required to bring the document into line with legislative requirements
- To identify any duplication or contradictory provisions within and across the various sections of the document to ensure consistency
- To bring forward suggested revisions to consolidate and improve presentation where successive revisions and additions may have affected coherence.

(Note: Contract Procedure Rules have been excluded from the review as they were only updated last year).

2.4 Whilst there are a range of options for varying the Council's established governance and decision-making arrangements and procedures at meetings the scope of the review did not extend to an evaluation of alternative models and arrangements.

3. Findings and Summary of Recommended Changes

3.1 Overall the review has concluded that Medway's Constitution is in good shape. Two specific areas have been identified as requiring revision as follows:

- the procedures for land and property acquisitions and disposals (which were corrected at Cabinet and Full Council on 21 January)
- the need to clarify that licensing of scrap metal dealers is an executive rather than non-executive function . It is proposed to retain the involvement of the Licensing Sub Committee in hearing representations from applicants for scrap metal licences in appropriate circumstances but in an advisory capacity to the Chief Legal Officer who will take the final decision under a delegation from the Leader/Cabinet.

3.2 It is also important to note that some sections of the Constitution (for example, the section on local choice functions) are based on legislation which is in need of review and consolidation. Although this has been acknowledged by the Government until such time as this happens local authorities have to act in accordance with the current legislative framework.

- 3.3 The exercise has provided an opportunity to bring forward revisions intended to improve presentation and to elaborate on, or clarify, the meaning of some provisions. With the exception of the areas highlighted in paragraph 3.1 above none of the changes arising from the review will vary established practice.
- 3.4 On 28 April full Council will be asked to agree the amendments to the Constitution arising from the review. These will include suggested revisions to Article 6 and the Overview and Scrutiny Committee rules to make them more coherent. Copies of both these sections of the Constitution are attached at Appendix A with the proposed revisions shown as tracked changes.
- 3.5 The only significant changes arising from the rewrite are the transfer of scrutiny of travellers to the Business Support Overview and Scrutiny Committee, a general tidy up of the terms of reference for each Overview and Scrutiny Committee to ensure they reflect the functions and organisation of the Council in 2016 and to include reference to updated health scrutiny powers and statutory requirements to scrutinise the Community Safety Partnership and flood risk. A minor rewrite of the terms of reference for the Joint Health Scrutiny Committee with KCC has been included to reflect current legislation and remove references to out of date and unused practices (which will need to be agreed by both Kent County Council and Medway Council).
- 3.6 It should be noted that this review is not an end in itself. The Monitoring Officer will continue to monitor and keep the operation of the Constitution under review, bringing forward revisions in line with Members wishes, legislative changes and emerging best practice. Medway's ongoing rigour in this regard has been one reason for the minimal change required to the Constitution as a consequence of this review.
- 3.7 This Committee has the remit to provide guidance and leadership on the development and co-ordination of the scrutiny function for all Overview and Scrutiny Committees. The Committee is invited to review the changes set out in Appendix A and forward them to Council for approval.

4. Consultation

- 4.1 The Chief Executive, Directors and Deputy and Assistant Directors have been consulted on proposed changes to the Constitution and have assisted in identifying updates required. Group Leaders have also been informally consulted.

5. Financial, Legal and Risk Management Implications

- 5.1 Section 9P of the Local Government Act 2000 (" the 2000 Act") requires a local authority to prepare and keep up to date a Constitution which contains a copy of the Council's standing orders, a copy of the Council's Code of Conduct , such information as the Secretary of State may direct and such other information as the Council considers appropriate. The Constitution must also include certain mandatory standing orders with respect to staff and the

regulation of specified aspects of the proceedings and business of the Council.

- 5.2 A local authority must ensure that copies of its Constitution are available at its principal office for inspection by members of the public at all reasonable hours. Any person may request a copy of the Constitution which must be supplied on payment of a reasonable fee.
- 5.3 When local authorities were required to choose between three forms of executive arrangements under the Local Government Act 2000 the Government published guidance dealing with the content and operation of new Constitutions. The guidance included a combination of the description of the main statutory provisions of the 2000 Act, subordinate legislation, statutory guidance to which local authorities must have regard and illustrative and good practice examples. Medway based its Constitution on the model published by the Government as part of the guidance.
- 5.4 There are no financial implications arising from this report.
- 5.5 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation, the rules in the Council's Constitution and best practice.

6. Recommendations

- 6.1 The Committee is asked to review the proposed revisions to Article 6 and the Chapter on Overview and Scrutiny Rules attached at Appendix A and to forward these to full Council on 28 April for approval with other revisions to the Constitution.
- 6.2 The Committee is asked to note that proposed changes to the Terms of Reference of the Joint Kent and Medway Health Overview and Scrutiny will be subject to approval by Kent County Council (KCC) as well and that Full Council will be asked to authorise the Monitoring Officer to finalise the wording in consultation with KCC and the Chairman and Opposition Spokespersons of the Council's Health and Adult Social Care Overview and Scrutiny Committee.

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Background papers

None

Appendices

Appendix A – Extract from Medway Council's Constitution - Proposed changes to Article 6 and the Chapter on Overview and Scrutiny Rules