

## **COUNCIL**

**28 APRIL 2016**

### **REVIEW OF THE COUNCIL'S CONSTITUTION**

Portfolio Holders: Councillor Andrew Mackness, Corporate Services

Report from: Perry Holmes, Chief Legal Officer/Monitoring Officer

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#### **Summary**

This report recommends changes to the Council's Constitution, following completion of a review commissioned by the Portfolio Holder for Corporate Services.

Appendix B to this report, setting out the proposed tracked changes to the Council's Constitution, has been circulated separately to Members and the Chatham Community Hub. It is also available as a supplementary agenda published to the modern.gov app and the Website:

<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=122&MId=3246&Ver=4>

#### **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 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**

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

- 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 The exercise has however provided an opportunity to bring forward revisions intended to improve presentation and to elaborate on, or clarify, the meaning of some provisions.

3.3 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.

## 4. Summary of Recommended Changes

- 4.1 A full copy of the Constitution, tracking all the recommended revisions has been provided to Members (Appendix B) and is also available as a supplementary agenda published to the modern.gov app and Website: <http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=122&MId=3246&Ver=4>
- 4.2 Appendix A to this report sets out a high level summary of the principal changes proposed to the Constitution, most of which are minor and do not vary established practice with the exception of changes to decision-making on licensing of scrap metal dealers. Some of the principal changes are highlighted below.
  - 4.2.1 The proposed revisions to the Employee Scheme of Delegation includes the addition of a list of designated Proper Officers for various functions to supplement the general provision relating to Proper Officer functions in paragraph 1.3 of Section 1 of the Delegation Scheme.
  - 4.2.2 Article 6 and the Overview and Scrutiny Committee rules have been redrafted to make them more coherent. 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.
  - 4.2.3 A minor rewrite of the terms of reference for the Joint Health Scrutiny Committee with Kent County Council, as set out in Part 5 (Overview and Scrutiny Rules) of the Constitution, has been included to reflect current legislation and remove references to out of date and unused practices. These have now been agreed with Kent County Council and so now require similar approval by Medway Council. Should there be any need for further minor revisions to these Terms of Reference, the Monitoring Officers of both authorities can authorise these under their respective delegations.
- 4.3 Running in parallel to the wider review, the Planning Committee on 6 April 2016 considered minor changes to the Planning Code of Good Practice; which included a short section on how Council- own planning applications are dealt with and revisions to the site visit protocol to bring it into line with current practice. The Committee agreed to recommend these to Full Council and these are set out as tracked changes within Appendix B. The Committee also agreed the introduction of a new provision requiring representations from at least two separate households in addition to representations from an Amenity Society before a planning application can be escalated from officer to Committee level for determination. As these have been approved by the Committee they are reflected within Appendix B but are not shown as tracked.
- 4.4 At the Audit Committee on 22 March 2016 Members considered the outcome of an internal audit review into debtors. A finding from the review was that it

would be good practice to produce an annual report of all debt written off for presentation to Cabinet. The Committee recommended that the Monitoring Officer investigate if this could be addressed within this Constitutional review and proposed wording is included as tracked within the Financial Limits within Chapter 3 (Responsibility for Functions) of Appendix B.

4.5 Included within the revisions at Appendix B are minor, mainly presentational changes, to the Council Rules. The Constitution does require that any motion to revise the Council Rules would be taken forward without discussion to the next ordinary meeting of the Council. On this occasion Members are requested to agree to suspend this requirement (in accordance with Rule 16.1 of the existing Council Rules) to enable these revisions to be agreed at this meeting.

4.6 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.

## **5. Consultation**

5.1 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.

5.2 Group Leaders have also been informally consulted.

## **6. Cabinet**

6.1 The Cabinet considered this report and the recommended revisions to the Constitution on 5 April 2016.

6.2 The Cabinet noted the proposed revisions to the Constitution, as summarised in Appendix A to the report and set out in full as tracked changes in the copy of the Constitution in Appendix B to the report, and agreed to recommend the changes to Full Council.

6.3 It was also noted that the Leader would approve changes proposed to any of the executive delegations as set out in full in the Employee Scheme of Delegations and this would take place following the determination of this report by Full Council.

6.4 The Cabinet agreed that the Monitoring Officer should have authority to reflect in this report to Council any comments on proposed revisions to Article 6 and the Overview and Scrutiny Rules from the Business Support Overview and Scrutiny Committee at its meeting on 14 April 2016. The outcome of the Committee's discussion is reported in section 7 below and it should be noted that no further revisions were necessary.

- 6.5 The Cabinet further noted that, at that time, the proposed changes to the Terms of Reference of the Joint Kent and Medway Health Overview and Scrutiny Committee were subject to approval by Kent County Council as well. Since Cabinet on 5 April 2016 Kent County Council have confirmed their approval of these revisions as set at paragraph 4.2.3 above. Any further minor revisions can be agreed by the Monitoring Officers of both authorities under their delegations.
- 6.6 Finally the Cabinet noted that any recommendations from the Planning Committee on the matters referred to in paragraph 4.3 of this report would be reported for approval by Full Council on 28 April.

## **7. Business Support Overview and Scrutiny Committee**

- 7.1 The Business Support Overview and Scrutiny Committee considered a report on the proposed changes to the Overview and Scrutiny Rules on 14 April 2016.
- 7.2 The Committee agreed to forward the proposed changes to full Council for approval with other revisions to the Constitution. During the debate on this report the Committee welcomed the inclusion of a paragraph in the rules on the role of the Business Support Overview and Scrutiny Committee in prioritising the topics for Scrutiny Task Group work. The roles of Overview and Scrutiny and the Regional Schools Commissioner were also discussed in relation to school effectiveness and improvement with specific reference to the prospect of all schools becoming Academies.

## **8. Further Revisions**

- 8.1 Whilst finalising this report for Full Council two further revisions have been identified and are reflected within Appendix B. These relate to:

- a) Chapter 3 (Responsibility for Functions) Part 1 – Responsibility for Local Choice Functions

Reference to the appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998 has been deleted. This is because this section was repealed by the Child Support, Pensions and Social Security Act 2000.

- b) Chapter 4 (Rules) Part 3 – Budget and Policy Framework Rules

Following discussion with the Chief Finance Officer, two further revisions are proposed to the Budget and Policy Framework Rules. These additional revisions are recommended to paragraphs 5.2 and 5.4 of the Rules and seek to clarify the approval process for budget virements between budget heads and also between Cabinet Member portfolios.

## **9. Financial, Legal and Risk Management Implications**

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 There are no financial implications arising from this report.
- 9.5 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 and best practice.

## **10. Recommendations**

- 10.1 The Council is asked to agree that Rule 16.2 of the Council Rules be suspended, to enable the proposed minor revisions to the Council Rules to be agreed at this meeting of the Council.
- 10.2 The Council is asked to consider and approve the proposed revisions to the Constitution as set out as tracked changes in Appendix B to this report.

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**Background papers**

None

**Appendices**

Appendix A - Summary of the principal changes proposed to the Constitution  
Appendix B - Proposed tracked changes to the Council's Constitution  
(Supplementary Agenda No.1)





## APPENDIX A - Constitutional Review 2015/16

### Summary of principal amendments and updates

The following table highlights and explains the principal amendments and updates proposed to the Constitution. There are a number of other minor revisions proposed marked as tracked changes throughout the Constitution, which seek to clarify the current position and/or correct presentational and typographical issues. Page numbers will be added following consideration at Council on 28 April 2016.

	<b>Summary and Proposed Revisions</b>
Chapter 1 – Summary and Explanation	-
Chapter 2 – Articles of the Constitution	<p>Within Article 1 it is proposed to delete the Council’s Vision, which was not required within the model Constitution and would require annual revision. The Council Plan is considered to be a more appropriate vehicle for this narrative.</p> <p>Additions to Article 5 reflect the role of the Deputy Mayor and Article 6 has been updated to more accurately present the roles and responsibilities of Overview and Scrutiny.</p> <p>Article 11 has been revised to clarify the definition of “Employees” for the purposes of the Constitution. A number of additions are proposed to the Articles for clarification purposes and to reflect the current legal position. For example, the statutory requirement for a Children and Young People’s Plan were revoked in 2010 and so reference to the plan has been removed from the Policy Framework List in Article 4 (should the Council choose to have a Children’s Plan in the future there remains an option to make it part of the Policy Framework).</p>
Chapter 3 – Responsibility for Functions	<p>Part 1 (Local Choice Functions) has been amended to remove references to legislation which has been revoked or repealed, and add references to legislation that has been amended or updated:</p> <ul style="list-style-type: none"><li>• The making of arrangements under section 20 (questions on police matters at council meetings) and the making of appointments under paragraphs 2 to 4 (appointment of members by relevant Councils) of the Police Act 1996 were repealed by the Police Reform and Social Responsibility Act 2011</li></ul>

- Functions relating to the preparation, submission and modification of a Local Area Agreement under the Local Government and Public Involvement in Health Act 2007 were repealed by the Deregulation Act 2015.

A number of other additions are proposed to the Chapter for clarification purposes and to reflect the current legal position, such as the wording within the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and the addition of the Appointments Committee for the Director of Children and Adult Services.

A number of additions/revisions to the Employee Scheme of Delegation are proposed:

- a governance process for EU funding streams, which would give express powers to the Director of Regeneration, Culture, Environment and Transformation to deal with grant funding bids.
- an additional delegation concerning the Housing Revenue Account Development Programme, which would formalise a delegation provided by Cabinet in 2013.
- Clarification that licensing of scrap metal dealers is an executive function – it is proposed that in future, whenever Member level involvement is required the Licensing Sub Committee would consider the application and make a recommendation to the Chief Legal Officer under his delegation from the Leader.
- Removal of the delegation relating to International Relations Project Funding – to reflect Cabinet decision 85/2015.

Where the Council is by law required to designate a proper officer, the Chief Executive and Directors are authorised to act as proper officers within their area of responsibility save for where a different proper officer is designated either by law or by the Constitution. To assist with this process a Proper Officer list is now appended to the Employee Scheme of Delegation.

It is proposed that text relating to the acceptance of Tenders and Sealing of Contracts are removed from the Financial Limits, with reference made instead to the Contract Procedure Rules. Other changes to the Financial Limits reflect the clarification (explained below for Chapter 4) provided on budget virements and transfers and capturing the existing provisions regarding settling claims.

## Chapter 4 - Rules

A number of additions are proposed to the Chapter for clarification purposes.

The definition of exempt information has been expanded to provide greater clarity on the categories, any qualifications and interpretation.

The Constitution has also been updated to allow the implementation of the Local Government (Electronic Communications)(England)Order 2015 which provide for Councillors to opt to receive the summons to meetings and associated paperwork at an electronic address.

The Budget and Policy Framework Rules (with subsequent revisions to other parts of the Constitution) provides a definition of a Budget Virement and Budget Transfer:

- Budget Transfer: A movement of budget between two or more cost centres to reflect changes in structures or reallocation of recharges, but where the original purpose of the budget remains unchanged.
- Budget Virement: A movement of budget between two or more cost centres where the budget is being redeployed to fund a different service or activity from that for which it was originally allocated.

The Terms of Reference of the Council's Overview and Scrutiny Committees have been revised. The intention has been to provide a more coherent and streamlined chapter, whilst retaining clarity about the allocation of Scrutiny responsibilities between committees. The Terms of Reference for the Joint Health Scrutiny Committee with Kent County Council have also been updated to reflect new legislation and remove references to practice no longer in use; these changes will need to be agreed by KCC and Medway Full Council meetings. Other changes are proposed to reflect the legislative provisions relating to scrutiny of health, flood risk management and community safety. The opportunity has also been taken to clarify that the Cabinet can only be asked to review a decision once under the call-in procedures.

A proposed addition to the Finance Rules would enable the Chief Finance Officer to approve in-year additions to the revenue budget, in consultation with the Finance Portfolio Holder, in the same way as currently able for capital.

Chapter 5 – Codes and Protocols	Revisions are proposed to a number of Codes and Protocols for clarification purposes and to reflect the current legal position/best practice, such as removal of the list of officers within the Whistleblowing Policy which would necessitate updating on a more frequent basis.
Chapter 6 – Members' Allowances	The Members' Allowances Scheme has been updated to correct out of date terminology and to reflect the decision at Full Council 21 January 2016 concerning allowances.
Chapter 7 – Management Structure	The Management Structure Chart has been updated to reflect the senior management reorganisation.