

COUNCIL

20 JULY 2023

REVIEW OF THE CONSTITUTION

Portfolio Holder: Councillor Vince Maple, Leader of the Council
Report from: Bhupinder Gill, Assistant Director Legal and Governance
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Summary

This report sets out a review of some sections of the Council's Constitution at the request of the Leader of the Council.

The report also sets out a proposal to hold a special Council meeting on 19 October 2023 for the purpose of conferring freedom of the borough on Medway NHS Foundation Trust on behalf of the staff at the Medway Maritime Hospital.

1. Budget and policy framework

- 1.1. The proposed changes to the Constitution set out in the report are a matter for decision by the Council.
- 1.2. The power to award honorary freedom of the borough is contained in the Local Government Act 1972 and is a matter for decision by the Council.

2. Background

- 2.1. Following the election of the new Leader of the Council at the Annual Council meeting, the Leader of the Council has asked that a number of sections of the Council's Constitution are reviewed, as set out below.
- 2.2. **Overview and Scrutiny Committees' terms of reference:** It is considered that the terms of reference for the four overview and scrutiny committees' (OSC) terms of reference should more closely align with the Children and Adults directorate, Regeneration, Culture and Environment directorate and the Business Support department. This means that some areas of responsibility, most prominently housing, will transfer from the Business Support OSC's terms of reference to the Regeneration, Culture and Environment OSC's terms of reference. This change plus other changes are clearly identified in Appendix A to the report.

- 2.3. It is also proposed to amend the title of the Business Support Overview and Scrutiny Committee to Business Support and Digital Overview and Scrutiny Committee in recognition of the emphasis that is being placed on our resident-centred approach to using digital, data, and technology to solve real world challenges through the redesign and transformation of Council services.
- 2.4. In addition to the above changes, following discussions between the Leader of the Council and the Chief Operating Officer it is proposed that budget monitoring reports (revenue and capital) are included in the terms of reference for all four OSCs, not just the Business Support OSC. These proposed changes are also set out in Appendix A to the report.
- 2.5. **Rules for the nomination of Mayor and Deputy Mayor:** The current rules have been in place since the 2010/2011 municipal year following Full Council's decision on 5 March 2009 as follows:
- “That with effect from the 2010/2011 Municipal Year, Rule 19 - Nomination of Mayor and Deputy Mayor shall be removed and replaced by the following:
- 19.1: The Mayor shall be elected by the Council from among the Councillors at the Annual Meeting and, unless a casual vacancy occurs, the Mayor shall continue in office until a successor is elected.
- 19.2: The Deputy Mayor shall also be elected by the Council from among the Councillors at the Annual meeting.
- 19.3 Except in the year of Medway Council Elections, the Council at its ordinary meeting before the Annual meeting shall nominate candidates to be recommended for election as Mayor and Deputy Mayor at the Annual Meeting (minute no. 705A/2009 refers).”
- 2.6. The Council most recently considered a report to change these rules back to the points system in July 2019. This proposal was not agreed by the Council (minute no. 165/2019 refers).
- 2.7. The Leader of the Council has requested that a proposal to reintroduce the points system be brought forward for consideration. The proposed changes to the Council Rules are set out in Appendix B to the report. However, Members are reminded that in accordance with Council Rule 16.2, this proposal will be taken forward without discussion to the next ordinary meeting of the Council as it involves making changes to the Council Rules in the Council's Constitution.
- 2.8. Medway Council was established on 1 April 1998. The first annual meeting of the Council was held on 6 May 1998 and the Mayor and Deputy Mayor were elected from among the Councillors present at the meeting (minute nos. 62 and 63/1998 refer). Subsequently, the Policy and Resources Committee agreed a points system on 26 May 1998 for the selection of Mayor and

Deputy Mayor (minute no. 260/1998 refers), which was applied between 1999-2009.

- 2.9. At the time of when the points system was established, it was considered that a system whereby each political group was credited on 1 January each year with a number of points equal to their total number of elected Members was the fairest and most appropriate system.
- 2.10. Under this system, the political group with the highest number of points on 1 January, would, following a report to Full Council every January setting out the outcome of the calculations in accordance with the scheme, be invited to nominate candidates for the Mayoralty for the ensuing year. Having accepted the invitation, that group would, on the following 1 January be debited with a number of points equivalent to the whole number of Members on the Council.
- 2.11. The effect of adopting the proposed changes with effect from 1 January 2024, should they be agreed, is set out in Appendix C to the report (section 20 refers). This sets out the calculations with effect from 1 January 2024 for the remainder of the electoral term. For the avoidance of doubt, the proposed rules for the points system are the same which were in use between 1999-2009, subject to minor changes advised by the Assistant Director Legal and Governance regarding Rules 20.1 and 20.9, as set out in Appendix C.
- 2.12. Members will note that proposed Council Rule 20.8 states: “Any political group not having been represented on the Council for a continuous period of 15 months or more shall be eliminated from the points system”. The previous practice was that existing Political Groups would continue to be recognised following the formal establishment of the Political Groups following each local elections during the previous period that the points system applied. This practice will be followed should the points system be adopted.
- 2.13. **Public questions:** the current arrangements for dealing with public questions (and Member questions) were agreed by the Council on 15 October 2015 (minute no. 431/2015 refers). In particular, this removed the right for a questioner to ask a supplementary question, after receiving a response to their question.
- 2.14. The Leader of the Council has requested that a proposal to reintroduce the option for supplementary questions in relation to public questions only be brought forward for consideration. The proposed changes to the Council Rules are set out in Appendix B to the report and this would limit the response to a supplementary question to no more than three minutes. Members are reminded that in accordance with Council Rule 16.2, this proposal will be taken forward without discussion to the next ordinary meeting of the Council as it involves making changes to the Council Rules in the Council’s Constitution.
- 2.15. **Freedom of the Borough:** Discussions have taken place between Group Leaders of the intention to bring forward proposals to express admiration for the hard work and commitment of the NHS as a whole but in particular the

staff of Medway Maritime Hospital. Therefore, Members will be asked to agree that a Special Meeting of the Council is convened on Thursday 19 October 2023 to consider a proposal to grant the freedom of Medway to Medway NHS Foundation Trust on behalf of the staff at the Medway Maritime Hospital. This meeting will be held at 6.30pm and the ordinary meeting will start at 7.30pm.

3. Advice and analysis

- 3.1. Members are asked to consider the proposed changes and note that a number of them must be taken forward to the next ordinary meeting (19 October 2023) without debate, as required by paragraph 16.2 of the Council Rules which states “Any motion to add to, change or withdraw these Council rules will, when proposed and seconded, be taken forward without discussion to the next ordinary meeting of the Council.” This applies to the proposals in respect of the arrangements for the nomination of the Mayor and Deputy Mayor and supplementary questions.
- 3.2. Members are asked to consider and determine the other matters set out in the report.

4. Financial, legal and risk management implications

- 4.1. There are no financial or risk management implications arising directly from this report.
- 4.2. The Council’s current arrangements for the election of Mayor and the appointment of Deputy Mayor each year are consistent with the legislative provisions, specifically sections 3-5 of the Local Government Act 1972. This states, specifically, that the Mayor shall be elected annually by the Council from amongst its Councillors. Whilst a points based system could be adopted by the Council, this cannot take precedence over the statutory basis for the election of Mayor and appointment of Deputy Mayor as detailed above.
- 4.3. Should a points based system be adopted by the Council, a group must comprise two Members to qualify as a political group, in accordance with the Local Government (Committees and Political Groups) Regulations 1990. Therefore, the Labour and Co-operative Group, Conservative Group and the Independent Group would qualify under these regulations.
- 4.4. If the proposed changes are agreed by the Council in October 2023, the decision will have the effect of amending the Constitution with effect from 1 January 2024. A report will then be submitted to Full Council on 25 January 2024 setting out the outcome of the calculations under this system. In addition, the Constitution will be updated accordingly to reflect the changes to Council Rule 20.

5. Recommendations

- 5.1. The Council is asked to approve the changes to the Overview and Scrutiny Committees' terms of reference as set out in Appendix A to the report.
- 5.2. The Council is asked to convene a Special meeting of the Council at 6.30pm on Thursday 19 October 2023 (to be followed by the ordinary Council meeting at 7.30pm) to consider a proposal to grant the freedom of Medway to the Medway NHS Foundation Trust on behalf of the staff of Medway Maritime Hospital as set out in paragraph 2.12 of the report.
- 5.3. The Council is asked to approve the changes to the Council Rules as set out in Appendix B to the report in respect of changes to arrangements for the nomination of the Mayor and Deputy Mayor and supplementary questions. **(Note:** Once proposed and seconded this recommendation will be taken forward without discussion for debate at the next ordinary meeting of the Council as set out in paragraph 3.1 of the report).

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Appendices

Appendix A – Overview and Scrutiny Rules
Appendix B – Council Rules
Appendix C – Mayoralty points system

Background papers

None