

Council

24 April 2025

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 the changes as to how full Council meetings are conducted and proposes to make some permanent changes, following initial consideration at the January 2025 full Council meeting. The report also confirms the proposal to trial some further changes with regards to public and Member questions at Council meetings.

This report also recommends the following changes to the Constitution:

- Kent and Medway NHS Joint Overview and Scrutiny Committee terms of reference and;
- Employee Scheme of Delegation.

1. Recommendation

- 1.1. The Council is asked to approve the changes to the Council Rules as set out in Appendix A to the report in respect of changes to the arrangements for conducting full Council meetings.
- 1.2. The Council is asked to approve the revised terms of reference for the Kent and Medway NHS Joint Overview and Scrutiny Committee, as set out in Appendix B to the report.
- 1.3. The Council is asked to approve changes to the Employee Scheme of Delegation, as set out in Appendix C to the report.

2. Budget and policy framework

- 2.1. The proposed changes to the Constitution set out in the report are a matter for decision by the Council.

2.2. Paragraph 16.2 of the Council Rules states that “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.” The Council has complied with this requirement by bringing forward proposals to the full Council meeting on 23 January 2025 where the Leader of the Council, Councillor Maple, supported by the Deputy Leader of the Council, Councillor Murray, proposed the changes to the Council Rules as set out in Appendix A to the report in respect of changes to the arrangements for conducting full Council meetings.

3. Background

3.1. The Constitution is reviewed and updated on an on-going basis to ensure it remains fit for purpose including compliance with legislation, in accordance with Article 14 of the Council’s Constitution.

3.2. **Arrangements for conducting full Council meetings:** Members will be aware of the following changes which have been trialled at full Council meetings since January 2024:

3.2.1. Bringing forward the deadline for the submission of Member questions and Motions to Midday, eight working days before the meeting.

3.2.2. Public questions being extended from 30 minutes to 40 minutes with a reduction in the time allocations for the Leader’s Report from 35 minutes to 30 minutes and the Overview and Scrutiny activity report from 25 to 20 minutes.

3.2.3. Public questioners having the option to send a representative to read out their question at the meeting or the Mayor will put the question on their behalf if they are unable to attend, noting that only public questioners attending in person will be able to ask supplementary questions.

3.2.4. Changes to the order of business on the agenda, namely the item on motions has been moved so it is taken after public questions. Any information reports or reports for noting have been the last agenda items.

3.2.5. Limiting the number of speakers per motion to the proposer and seconder, plus up to 10% of each group (rounded up) with the same number of speakers allowed for each amendment to a motion.

3.3. Discussions have taken place at the Leader’s Cross Party Governance meetings, to which Group Leaders, Deputy Leaders and Group Whips are invited to attend, and they have agreed that these changes be now made permanent, noting the impact that some of the proposed further changes below, may have, should it also be proposed in the future that they be made permanent, this would also include the deadline for submission of public questions being the same as Member questions in the interests of consistency and administrative efficiency.

- 3.4. These changes are set out in Appendix A as tracked changes for ease of reference. As referenced in paragraph 2.2 of the report, paragraph 16.2 of the Council Rules, which was complied with at the full Council meeting on 23 January 2025, states that “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.”
- 3.5. The matter of how Council meetings are conducted will continue to be kept under review by Group Leaders and at the Cross Party Governance meetings, with any proposals being reported to full Council for consideration.
- 3.6. **Further proposed changes to the arrangements for dealing with public and Member questions:** as reported to the full Council on 23 January 2025, at the recent Cross Party Governance meeting (22 November 2024) and Group Leaders’ meeting (10 January 2025), it was agreed that further proposed changes to the arrangements for dealing with public and Member questions be trialled for six months starting from the beginning of the new municipal year.
- 3.7. Given that most questions relate to Cabinet (executive) functions, any public or Member questions which are submitted will be reviewed by the Head of Democratic Services and Assistant Director, Legal and Governance and any questions relation to Cabinet functions, will be referred to the next Cabinet meeting, any other questions will be referred to the next full Council meeting in accordance with the submission deadlines which are in place at the time.
- 3.8. For any questions dealt with by the Cabinet, the same rules will apply as set out in the Council Rules, e.g. public questioners will be able to ask a short supplementary question.
- 3.9. With regards to inclusion of questions on the forthcoming Cabinet agenda, such questions received no later than Midday, three working days before the meeting (e.g. noon on the Thursday prior to a meeting held on a Tuesday) will be included, otherwise they will be included on the following Cabinet meeting agenda. A period of 20 minutes will be set aside for questions at Cabinet meetings and first-time questioners and questions relating to items on the Cabinet Agenda will be prioritised. Questions not dealt with at the meeting will receive written responses.
- 3.10. Key benefits of this will be the increased frequency and timeliness to hold the executive to account, greater time set aside for accountability (up to an additional 260 minutes cf 240 minutes when annualised), and the ability for the public and Members to put questions to Cabinet Members on matters on the Cabinet Agenda. Both members of the public and Members have access to the Cabinet’s Forward Plan which is published on the website. The Forward Plan sets out the reports proposed to be considered by the Cabinet on a four month rolling basis, and this will aid those who wish to submit questions to the Cabinet.

- 3.11. As part of this and during the trial period, views of public questioners will be sought to help inform any proposals to make these changes permanent.
- 3.12. **Kent and Medway NHS Joint Overview and Scrutiny Committee (JHOSC) terms of reference:** the Health and Adult Social Care Overview and Scrutiny Committee considered a report on 16 January 2025 regarding the arrangements for the scrutiny of substantial variations of service impacting on both Medway and Kent. The Committee agreed for the terms of reference to be amended accordingly.
- 3.13. To re-cap, prior to 31 January 2024, Local Authorities had the power to refer substantial variations to the Secretary of State, who could only intervene once a valid referral had been received and been accepted. The Health and Care Act 2022 removed this referral power from Local Authorities and gave the Secretary of State a new power of intervention in the operation of local health and care services – this is known as a ‘call-in’.
- 3.14. Under the Health and Care Act 2022, any interested party can request the Secretary of State call-in a proposed variation to local health services. The decision to issue a call-in rests with the Secretary of State. The guidance states that the purpose of intervention is to unblock local problems and disagreements, which suggests that use of the call-in power to intervene would, in most cases, be following a call-in request from an interested party.
- 3.15. Colleagues at Medway and Kent County Council (KCC), including the Health Scrutiny Chairpersons from each local authority, have worked together to review and propose changes to the JHOSC’s terms of reference, these are set out in Appendix B for approval with the recommended revisions shown as tracked changes for ease of reference. It is also recommended that the section entitled “Rules” which are included in KCC’s JHOSC terms of reference, also be reproduced in Medway’s version for the purposes of consistency.
- 3.16. These proposed changes were considered and approved by KCC on 13 March 2025.
- 3.17. **Employee Delegation Scheme:** this is kept under regular review to ensure that the scheme remains fit for purpose. It is recommended that the general scheme (section 1) is updated to provide absolute clarity on the issue of officers exercising delegated powers, with particular reference to where a senior officer may be absent. This is set out in Appendix C to the report and the additions (paragraphs 1.5-1.7) are clearly highlighted for ease of reference.

4. Advice and analysis

- 4.1. The changes to full Council meetings have been trialled since January 2024, therefore, Members have attended a number of meetings to consider their effectiveness and whether such changes should be made permanent. In

addition, it is sensible to trial further changes before deciding, in due course, whether such changes should be made permanent.

- 4.2. The proposed changes to the JHOSC's terms of reference have been considered by the Health and Adult Social Care Overview and Scrutiny Committee, which recommended to bring forward changes to full Council for approval.
- 4.3. Other than minor changes, the Monitoring Officer is required to bring forward changes to the Constitution for consideration and approval, in accordance with Article 14 of the Constitution.

5. Consultation

- 5.1. Members have been consulted on the proposed changes as detailed in the report.

6. Financial, legal and risk management implications

- 6.1. There are no financial management implications arising from this report.
- 6.2. 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.
- 6.3. 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.

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Appendices

Appendix A – Tracked changes to the Council Rules (chapter 4, part 1 of the Constitution)

Appendix B – Tracked changes to the terms of reference of the Kent and Medway NHS Joint Overview and Scrutiny Committee (chapter 4, part 5 of the Constitution)

Appendix C – Changes to the Employee Delegation Scheme (chapter 3, part 4)

Background papers

None