

Central
Bedfordshire
Council
Priory House
Monks Walk
Chicksands,
Shefford SG17 5TQ



**TO ALL MEMBERS OF THE
GENERAL PURPOSES COMMITTEE**

21 June 2016

Dear Councillor

GENERAL PURPOSES COMMITTEE – THURSDAY, 30 JUNE 2016

Further to the agenda and papers for the above meeting, previously circulated, please find attached the following report which was marked to follow:-

8. Amendments to the Council's Constitution

To consider a range of proposed amendments to the Council's Constitution.

Should you have any queries regarding the above please contact me.

Yours sincerely

Leslie Manning
Committee Services Officer

email: leslie.manning@centralbedfordshire.gov.uk
telephone: 0300 300 5132

This page is intentionally left blank

Central Bedfordshire Council

GENERAL PURPOSES COMMITTEE

30 June 2016

AMENDMENTS TO THE COUNCIL'S CONSTITUTION

Advising Officer: Quentin Baker, Monitoring Officer and Solicitor to the Council
quentin.baker@centralbedfordshire.gov.uk

Contact Officer: Maria Damigos, Senior Corporate Lawyer
(maria.damigos@centralbedfordshire.gov.uk)

Purpose of this report

1. To consider proposed changes to the Council's Constitution as part of the ongoing review and updating of the document necessary to ensure its accuracy, clarity and fitness for purpose and to also note the proposed changes to the Procurement Procedure Rules.

RECOMMENDATIONS

The Committee is asked to:

1. Consider the proposed amendments to the Constitution.
2. Recommend to full Council that it:-
 - a. approve and adopt the changes to the Constitution set out below and detailed in Appendix A and
 - b. the Constitution be ordered and formatted in the standard form and
 - c. authorise the Monitoring Officer to implement the changes and take any steps consequential, incidental or necessary to bring them into effect.
3. Note the proposed amendments to the Procurement Procedure Rules

Overview and Scrutiny Comments/Recommendations

2. This report is not scheduled to be considered by Overview and Scrutiny because it concerns changes to the Constitution rather than a decision being made pursuant to a specific function of the Council.

Executive Summary

3. The process of updating the Constitution is ongoing throughout the year due to the emergence of new legislation or awareness of previously unrecognised operational issues. However, at least once every 12 months it is useful for the Monitoring Officer to undertake a focussed review the constitution to pick up any key issues that have emerged over the preceding months.
4. The key issues highlighted for review in this annual review have been those relating to the processes followed when considering proposals involving collaborative or joint working or procurement with external bodies such as other local authorities and health bodies.
5. A second specific area of focus was that of the provisions relating to Overview and Scrutiny and in particular, the mechanism by which matters are referred for consideration. However, the recommendation is to leave this unchanged.
6. Another matter which was considered during the passage of the past 12 months was the definition of Key Decisions and this was considered and resolved through a separate report.
7. On the basis of the consultation received the bulk of the Constitution remains fit for purpose subject to minor legislative changes.

Introduction and Background

8. Since 2000, all local authorities have been subject to a legal duty to prepare and maintain a constitution. (S.9P of the Local Government Act 2000 formerly S.37).
9. The constitution is a document containing the key information about how the council is structured and how it makes decisions. This is a mixture of the Council's Standing Orders, procedures and protocols which govern how the Council carries out its business. It is not intended to be an exhaustive list of the legal powers under which a council operates.
10. The general framework of all councils is set out in legislation and the constitution reflects this. However, there are also some elements of the constitution that are subject to local choice and design.
11. Prior to 2000 local authorities had a variety of constitutional documents which governed the way in which the authorities operated, but did not have constitutions as such. S.37 of the Local Government Act 2000 required authorities to adopt constitutions containing their standing orders, code of conduct for members, any other information they

considered appropriate and 'such information as the Secretary of State may direct'.

12. There was much information which the Secretary of State wished to direct. The Local Government Act 2000 (Constitutions) (England) Direction 2000 sets out 26 matters (a-z) which should be included, a number with their own sub-paragraphs.
13. The then Secretary of State produced a model constitution, with a proposed structure and on most points a suggested text. Guidance was also produced on the content of the constitutions and how the new executive arrangements should be operated.
14. There were a variety of variations in the initial constitutions adopted by local authorities. These included different principles of decision making and a range of scrutiny procedures. Authorities have subsequently found themselves changing the constitution as procedures were adjusted and structures changed and new legislation arose. However, the vast majority still conform broadly to the structure of modular constitution as set out in the original guidance and this is of benefit in that consistency of structure assists navigation and interpretation of the document.

Ongoing Maintenance, Review and Updating

15. Due to the dynamic nature of the legislation relating to local authority functions the wording of the Constitution needs to be reviewed on a regular basis to ensure it remains up to date and fit for purpose.
16. Part A5 of the CBC Constitution makes provision for the review and updating of the constitution. The provisions require that the Monitoring Officer shall have responsibility for the oversight of this process and in particular requires the following:-
 - 1.1 *The Monitoring Officer will monitor and review the operation of the constitution to ensure that the aims and principles of the constitution are given full effect, and will report to the General Purposes Committee.*
17. This generally consists of an annual review by the Monitoring Officer with minor and consequential amendments being made as necessary throughout the year to keep up to date with legislative and policy changes. Any such review is informed by the stated purposes of the Constitution as set out in Part A2 paragraph 1.3.
18. It should be noted that most changes to the Constitution will require a Decision of Full Council, on the advice of the General Purposes Committee, with the exception of those relating to Executive Delegations or those imposed by operation of law.

19. Due to the fact that there are numerous changes to legislation and other requirements for minor amendments, Part A5 also contains a delegation to the Monitoring Officer to make minor changes to the constitution at any time where they result from changes in legislation, correcting of errors or general updating. Any such changes must be publicised on the Council's website.
20. It should be noted that over the last 12 months there have been a number of amendments made under this delegated authority hence many of the minor changes are not included within the scope this report.
21. In respect of the above delegated authority for minor and consequential amendments it is proposed to add the requirement that a schedule of any such changes is presented at each meeting of the GPC.

Process of Review

22. In undertaking this review consultation with Directors took place together with a review of relevant legislation. In addition, helpful comments and suggestions were received from elected members.
23. The review has also been informed by consideration of recommendations made by external bodies who have had cause to comment on the Council's processes or governance structures.
24. In respect of future annual reviews it is proposed to introduce a more structured and formal process of consultation engaging with all senior officers, elected members and key stake holders.

Proposed Amendments & Additions

25. The following paragraphs set out the proposed amendments and seek to explain their rationale. The proposed amended wording is set out in a schedule in Appendix A to this report. Where they are amendments these are shown as tracked changes. Where the wording is entirely new it is set out with an accompanying note to that effect.
26. The proposed changes can be divided broadly in to two main categories:-
 - i) those arising from legislative change and secondly,
 - ii) those which are intended to improve the process or function of the Council's constitution, i.e. improving its 'fitness for purpose'.
27. In addition to the above, although the content of CBC's Constitution shares much in common with other councils the layout and structure of the document departs from the model version followed by the vast majority of councils. Although this doesn't present any technical

problems it is considered that consistency of lay out would be beneficial and accordingly the Monitoring Officer should order and format the Constitution in the standard form.

A) Changes Necessitated by Legislation

28. There are a number of areas which have seen legislation re-enacted or amended and whilst these do not result in any practical changes to the statutory obligations and responsibilities of the Council in some cases it is necessary or helpful to reflect any such changes in the Constitution as this aids understanding and applicability of its provisions.
29. These changes are set out in section 1 of Appendix A to this report and the key changes in this regard may be summarised as follows:-
- i) Express confirmation of the right of the public to film and record meetings open to the public. (Openness of Local Government Bodies Regulations 2014).
 - ii) Inclusion of delegation of functions under the Health and Social Care Act 2012.
30. Any other minor amendments necessary due to legislative re-enactments will be made under the Monitoring Officer's delegated powers and reported to General Purposes Committee as and when necessary.

B) Changes Designed to Enhance Fitness for Purpose

Clarification as to the Arrangements for Establishing Shared Services or Partnership Working.

31. The way in which councils and other public bodies make arrangements for the provision of services within their remit has in some respects, changed significantly over the past decade and continues to do so at pace.
32. Two key areas for change have been:-
- i) the increasing numbers and scale of shared or collaborative service provision between organisations within the public sector and secondly,
 - ii) the increasing extent and complexity of partnership working between organisations within the public and not for profit sector.
33. In light of these trends the review has focussed on the existing parts of the Constitution where it might be envisaged that these issues would be covered.

34. Those parts are Part I3 the Code of Procurement Governance and J3, the Partnerships Protocol.
35. Turning to the first of these shared and collaborative service provision may in some cases raise questions of procurement law and practice due to the developing legal framework underlying these arrangements much of which has originated from the European Commission and Court of Justice. As such, this is an area where it is especially important that appropriate legal and procurement advice and guidance should be utilised.
36. In addition, shared or collaborative arrangements between public bodies and in support of public functions, or what has been described by the European Court of Justice as 'inter municipal collaboration', are considered to be exempt from the normal framework of procurement regulations.
37. However, notwithstanding this exemption it is recognised that on general principles of public law and good governance it is necessary for any participating public body to be able to demonstrate fairness and objectively justify its decision to enter into any collaborative arrangements by reference to supporting evidence or analysis.
38. In light of the above Part I3 has been amended to strengthen and emphasise these considerations. The detailed amendments are set out in section 2 of Appendix A to this report.
39. The Council's Procurement Procedure Rules, which are maintained by the Procurement Team itself as opposed to being a part of the Constitution, will also need to be updated to reflect the proposed changes in the Constitution.
40. As the proposed changes strengthen the decision making process around shared or collaborative arrangements and ensure the Procurement Procedure Rules are aligned to the principles contained in the Constitution the Committee is asked to note the proposals which will be updated when the proposed changes to the Constitution are approved by Council.
41. The proposed changes to the Procurement Rules are detailed in Appendix B to this report.

The Governance of Partnerships and Partnership Working

42. The patchwork of partnership working across the various agencies which together form the core providers of 'public services' is sometimes complex and requires simple and distinct lines of governance clearly recorded and understood by all those participating in the partnership.

43. The Constitution contains a section devoted to Partnerships, (Part J3), and this contains a comprehensive set of guiding principles and specific guidance. The key issues are:-
- Clarity of Purpose – I.e. what's the purpose of the partnership.
 - Clarity as to the status of the partnership – is it an entity in its own right
 - Clarity as to the scope of any powers delegated to the partnership.
 - Clarity of governance – Who controls/influences the partnership and how do they exercise this control/influence.
44. Having reviewed this Part apart from the addition of a small section on local authority owned companies it is considered that the existing wording flags all the issues that should be considered by officers when entering into partnerships of all kinds.

Overview and Scrutiny

45. One of the responses to the consultation on the review referred to the Overview and Scrutiny function (OSC) and suggested that there was a lack of clarity as to which matters should be referred to OSC.
46. Having reviewed the provisions in the Constitution in Parts D1, D2 and G1 It is clear from the provisions that the individual OSC's shall be responsible for setting their own work programme and this will be informed by the wishes of the committee members.
47. The work of Overview and Scrutiny is commonly divided in to two different strands those being the Policy development or pre-decision work usually referred to as 'Overview' and secondly, the 'Scrutiny' or post decision work including 'call in' and performance monitoring. These two aspects are closely related and the one informs the other.
48. The Council's current constitutional provisions reflect the legal requirements set out in the Local Government Act 2000 and mirror common practice amongst local authorities of granting a wide discretion to the OSC's themselves as to how they devise their work plan. This enables committees to focus their time and resources in the areas they consider to be of highest priority. In addition, recent legislative change enables any member of council to require an item to be included on the agenda of an OSC committee. (Part D2 Paragraph 3.1).
49. Any requirements for specific decision reports to be routed via the relevant OSC could be limiting and may have significant time and resource implications for any one of the committees. It is accordingly suggested that this is a matter best dealt with by providing greater clarity and additional advice and guidance issued to report writers by Democratic Services.

Statutory Officers

50. The current grievance procedures specifically exclude the statutory officers and state that the procedure is outlined within the Constitution. However, currently there is no reference to that effect within the Constitution and accordingly the amendments outlined in Appendix A to the report are proposed.

Council Priorities

51. The effectiveness of the Council's Constitution contributes to the achievement of all the Council's priorities.

Corporate Implications

Risk Management

52. It is important that the Council has in place an effective Constitution. The main risk to the Council of a failure to do so is a challenge to decision making.

Staffing (including Trades Unions)

53. There are no specific staffing issues arising from this report.

Legal Implications

54. The Constitution should be maintained in an up-to-date state and the action taken complies with this duty.

Financial Implications

55. None

Equalities Implications

56. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Amendments to the Constitution have been considered in light of this statutory duty.

Conclusion and next Steps

57. To update the Constitution as appropriate once approved by Council.

Appendices

The following Appendices are attached:

Appendix A – Detail of proposed amendments to Constitution.

Appendix B – Detail of proposed amendments to Procurement Procedure
Rules

Background Papers

None

This page is intentionally left blank

APPENDIX A

Proposed Amendments and Additions

Section 1 - Updates Necessitated due to Legislative Change

Part A2 – Purpose of the Constitution

1.1 The constitution is made under Section ~~9P37~~ of the Local Government Act 2000. The purpose of the constitution is to provide a framework of rules governing the way in which the Council exercises its functions and takes decisions. The Council is required to maintain an up to date constitution.

Part A4 – Citizens and the Council

Suggested new paragraph Part A4 paragraph 3.3 to take account of statutory right to film and record council meetings.

Para 3. Information

Citizens have the right to:-

3.3 film, photograph, record or report on any public meeting in accordance with legislation with the exception of any meeting or part of a meeting which is being held in private because confidential or exempt information is being discussed and an appropriate resolution to that effect has been passed.

[see Openness of Local Government Bodies Regulations 2014]

H1 – Proper Officer

Paragraph 3.1 Table of Proper Officers

12.	S.212A-S.9FB Local Government Act 2000	Scrutiny Officer	Director of Improvement and Corporate Services
-----	--	------------------	--

Paragraph 4.4 Table of Proper Officer Appointments

17	The Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000 Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012	Regs 3 and 4 12 and 13	Recording of collective executive decisions	Monitoring Officer
18		Regs 5, 6, 9 and 11 14 and 15	Compilation and availability of background papers, agenda and connected reports in relation to executive decisions	Monitoring Officer
19		Regs 12 and 15 10	Publicity in connection with the forward plan and giving notice etc. in cases of urgency	Monitoring Officer
20		Reg 17 16	Rights of access to documents for councillors	Monitoring Officer

Receipt and recording of Members' interests is now required under Sections 29 and 30 Localism Act 2011 by the Monitoring Officer rather than proper officer under S.96(2) of the Local Government Act 1972 therefore remove row 29 and renumber.

H3 - Delegations

Paragraph 4.7 – Director of Public Health

Further powers and functions contained in the Health and Social Care Act 2012

4.7.4 To exercise such other functions relating to public health as prescribed under the Health and Social Care Act 2012 and as may be prescribed by the Secretary of State, including those functions under the Licensing Act 2003 that are prescribed by the NHS Bodies and Local Authorities (partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

Section 2 – Fitness of Purpose

Amendment to reporting requirement for MO when exercising delegated authority to amend the constitution.

Part A5 Paragraph 2.3

2.3 The Monitoring Officer shall make urgent amendments to give effect to any decision of the Council or changes in the law, and minor amendments such as to correct errors or to ensure that the constitution is up-to-date. Any such changes will be published on the Council's website on a quarterly basis and report to the next scheduled meeting of GPC.

Clarification of Process for Assessing Shared and Collaborative Arrangements

Part I3 – Code of Procurement Governance

New paragraph 6:

- 6. *Processes for the Assessment and Implementation of Shared Service or Collaborative.***
 - 6.1 Inter-municipal collaboration or shared services, is an increasingly prevalent form of service provision within the public sector due to the potential for costs efficiencies to be derived from economies of scale and the relative flexibility they enable in establishing such arrangements. These arrangements are in many cases exempt from the procurement regulatory regime and as such not subject to the formal requirements of tendering etc.*
 - 6.2 However, it is essential that any proposed shared service arrangement is subject to open and rigorous challenge to establish the business case rationale for proceeding with such an arrangement as an alternative to pursuing a standard outsourcing procurement route or retaining in-house provision. The use of shared services is unlikely to be popular with private sector providers who view these arrangements as negatively impacting upon the market for service provision and as such the potential for challenge is a real possibility.*
 - 6.3 The precise design of the selection processes will vary depending upon the nature of the arrangement and it is essential that appropriate professional advice is obtained in relation to the Legal, Procurement and Financial aspects of the arrangement.*

- 6.4 *In some cases, a competitive selection process may be appropriate but in all cases it is essential that the Council acts in accordance with general public law principles and good governance and the following list is intended as a guide in how to approach the assessment of such proposals.*
- *Ensure that all aspects of the process, including decision making and supporting evidence, are fully documented and available for audit purposes.*
 - *Preparation of a business case is an essential element of this type of assessment.*
 - *An options analysis should also be completed and signed off by a Director and elected members.*
 - *Obtain legal, procurement and finance advice at an early stage in developing any shared service proposal.*
 - *Ensure that processes followed in the selection or assessment of any proposal are objectively fair and reasonable.*
- 6.5 *Following the above general principles should avoid any sustainable challenges being brought and ensure that any decision making as to the appropriateness of any such arrangement is robust and objectively justifiable on the basis of financial and service benefits for the Council and its residents.*

Governance of Partnerships

Part J3 – Partnerships Protocol

Additional wording for Part J3, Paragraph 1.5.3

- 1.5.3 *Private Sector Partnerships: Private companies, either in their own right or as part of a public sector partnership entering into a contract with the Council for a considerable period.*
- 1.5.4 *Public Sector Partnerships through jointly owned companies: These arrangements are becoming more common due to the advantages of using a separate legal vehicle as a basis for shared service delivery. Governance arrangements must be established in order that the Council is able to properly monitor the performance of the company and to exercise control and influence through its ownership rights such as share voting rights.*

Scheme of Delegation – Clarification

Part H3 – Scheme of Delegation

Paragraph 4.2.14 - Clarify delegations to Monitoring Officer by listing within a separate paragraph.

Terms of Reference – Committee Delegation

Part E2 – Paragraph 5.1.9

Clarification of extent of delegation to the General Purposes Committee.

*5.1.9 Oversight of the Council's constitution, including approving, **for recommendation on to Full Council**, any changes that may be required on the advice of the Monitoring Officer;*

Update re Statutory Officers

Part H4 – Officer Employment Procedure Rules

Suggested amendments to paragraph 5 to include reference to grievances.

5. Grievances and Disciplinary Action

5.1 Any grievance involving the Head of Paid Service, Monitoring Officer or Chief Finance Officer will be conducted in accordance with the relevant contractual provisions.

*5.12 **Suspension.** The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.*

5.23 Councillors will not be involved in any disciplinary action against any officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of disciplinary action.

This page is intentionally left blank

APPENDIX B

Proposed Amendments to the Procurement Procedure Rules

Replacement Section 2.1

2.1 Shared Service and Partnership Working

2.1.1 The way in which councils and other public bodies make arrangements for the provision of services within their remit has changed over the years and continues to change apace. Two key areas of change have been:

- the increasing number and scale of shared or collaborative service provisions between organisations within the public sector and secondly,
- the increasing extent and complexity of partnership working between organisations within the public and not for profit sector.

The Council's Constitution addresses the governance requirements in two sections: Part I3 the Code of Procurement Governance and J3, the Partnerships Protocol.

2.1.2 Shared and collaborative service provisions may in some cases raise questions of procurement law and practice due to the developing legal framework underlying these arrangements, much of which has originated from the European Commission and Court of Justice. As such, this is an area where it is especially important that appropriate legal, procurement and finance advice and guidance is sought as each requirement may be very different. What follows is general advice and guidance.

Processes for the Assessment and Implementation of Shared Service or Partnership Working.

2.1.4 Inter-municipal collaboration or shared services in support of public functions, is an increasingly prevalent form of service provision within the public sector due to the potential for costs efficiencies to be derived from economies of scale and the relative flexibility they enable in establishing such arrangements. These arrangements are in many cases exempt from the procurement regulatory regime and as such not subject to the formal requirements of tendering.

2.1.5 However, it is essential that any proposed shared service arrangement is subject to open and rigorous challenge to establish the business case rationale for proceeding with such an arrangement as an alternative to pursuing a standard outsourcing procurement route or retaining in-house provision. The use of shared services is unlikely to be popular with private sector providers who view these arrangements as negatively

impacting upon the market for service provision and as such the potential for challenge is a real possibility.

2.1.6 The precise design of the selection processes will vary depending upon the nature of the arrangement and it is essential that appropriate professional advice is obtained in relation to the Legal, Procurement and Financial aspects of the arrangement.

2.1.7 In some cases, a competitive selection process may be appropriate but in all cases it is essential that the Council acts in accordance with general public law principles and good governance and the following list is intended as a guide in how to approach the assessment of such proposals.

- Ensure that all aspects of the process, including decision making and supporting evidence, are fully documented and available for audit purposes.
- Preparation of a business case is an essential element of this type of assessment.
- An options analysis should also be completed and signed off by a Director and elected members.
- Obtain legal, procurement and finance advice at an early stage in developing any shared service proposal.
- Ensure that processes followed in the selection or assessment of any proposal are objectively fair and reasonable.

2.1.8 Following the above general principles should avoid any sustainable challenges being brought and ensure that any decision making as to the appropriateness of any such arrangement is robust and objectively justifiable on the basis of financial and service benefits for the Council and its residents.