

## Central Bedfordshire Council

Council

21 July 2016

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### AMENDMENTS TO THE COUNCIL'S CONSTITUTION

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#### Purpose of this report

1. This report sets out proposed changes to the Council's Constitution which were considered at the General Purposes Committee on 30 June 2016 and subsequently recommended to Council for approval. The proposed changes form part of the ongoing review and updating of the Constitution which is necessary to ensure its accuracy, clarity and fitness for purpose. Council is also asked to note the changes to the Procurement Procedure Rules which will arise if the changes to the Constitution are approved.

#### RECOMMENDATIONS

Council is asked to:

1. approve and adopt the changes to the Constitution set out below and detailed at Appendix A;
2. approve the ordering and formatting of the Constitution in the standard form;
3. authorise the Monitoring Officer to implement the changes and take any steps consequential, incidental or necessary to bring them into effect;
4. note the proposed amendments to the Procurement Procedure Rules set out at Appendix B.

## **Overview and Scrutiny Comments/Recommendations**

1. This report has not been considered by Overview and Scrutiny because it concerns changes to the Constitution, which the General Purposes Committee has oversight of, rather than a decision being made pursuant to a specific function of the Council.

## **Executive Summary**

2. 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 the Monitoring Officer undertakes a focussed review of the Constitution to pick up any key issues that have emerged over the preceding months.
3. 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.
4. 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 made to the General Purposes Committee, and accepted by Members, was to leave this unchanged and deal with any matters through issuing greater clarity and additional advice and guidance to report writers by Democratic Services.

## **Ongoing Maintenance, Review and Updating**

5. 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.
6. 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.*
7. 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.

8. The General Purposes Committee noted that most changes to the Constitution would require a decision by full Council, on the advice of the Committee, with the exception of those relating to Executive Delegations or those imposed by operation of law.
9. However, due to the fact that there are numerous changes to legislation and other requirements for minor amendments, Part A5 of the Constitution 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.
10. 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.
11. 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 General Purposes Committee (section 2 of Appendix A to the report refers).

### **Process of Review**

12. In undertaking the review consultation with Directors took place together with a review of relevant legislation. In addition, helpful comments and suggestions were received from Members.
13. The review was also informed by consideration of recommendations made by external bodies which have had cause to comment on the Council's processes or governance structures.
14. 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**

15. The proposed amended wording is set out in a schedule in Appendix A to this report. Where there 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.
16. The proposed changes can be divided broadly in to two main categories:-

#### **Those arising from legislative change**

17. 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.
18. These changes are set out in section 1 of Appendix A to this report and the key changes refer to the following:-
  - 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.
19. The General Purposes Committee noted that any other minor amendments necessary due to legislative re-enactments would be made under the Monitoring Officer's delegated powers and reported to that Committee as and when necessary.

**Those which are intended to improve the process or function of the Council's Constitution, i.e. improving its 'fitness for purpose'.**

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

20. These changes are set out in section 2 of Appendix A to this report and refer to the following key areas:-
  - i) the increasing numbers and scale of shared or collaborative service provision between organisations within the public sector
  - ii) the increasing extent and complexity of partnership working between organisations within the public and not for profit sector.
21. The 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 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.
22. 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.

23. 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.
24. In light of the above Part I3 has been amended to strengthen and emphasise these considerations. Nonetheless, the Committee felt that an additional paragraph should be added requiring any partnership to have a formal mechanism and structure of governance set out in a written document. The Monitoring Officer stressed that paragraph 6.4 was not a template but a list of guiding principles. At the request of Members he then outlined the operational arrangements of LGSS Law Ltd as an illustration of how such organisations could work. In response to a further query he also explained how, in drawing up the proposed changes, he had focused on the recent guidance issued by the Council's external auditor (Ernst & Young LLP) and followed their recommendations closely.
25. 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.
26. 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 noted the proposals which would be updated subject to the proposed changes to the Constitution being approved by Council.
27. The proposed changes to the Procurement Rules are detailed in Appendix B to this report.

### **The Governance of Partnerships and Partnership Working:**

28. These changes are set out in section 2 of Appendix A to the report. The General Purposes Committee noted that Part J3 of the Constitution contains a comprehensive set of guiding principles and specific guidance on this matter. 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?

29. Apart from the addition of a small section on local authority owned companies it was felt that the existing wording flagged all the issues that should be considered by officers when entering into partnerships of all kinds.

### **Statutory Officers**

30. 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.

### **Layout and Structure of Constitution**

31. In addition to the above, although the content of Central Bedfordshire Council's Constitution shares much in common with that of other councils the layout and structure of the document departs from the model version followed by the vast majority of councils. Whilst this doesn't present any technical problems it is considered that consistency of lay out would be beneficial and so authority is sought for the Monitoring Officer to order and format the Constitution in the standard form.

### **Council Priorities**

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

### **Corporate Implications**

#### **Legal Implications**

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

#### **Financial and Risk Implications**

34. 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.

#### **Equalities Implications**

35. 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**

36. To update the Constitution as appropriate once approved by Council. The reordered Constitution to then be submitted to a suitable meeting of the General Purposes Committee for consideration.

### **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