

Division(s): All

## **AUDIT & GOVERNANCE COMMITTEE**

**3 MARCH 2021**

### **CONSTITUTION REVIEW**

**Report by the Director of Law & Governance and Monitoring Officer**

#### **1. RECOMMENDATION**

**The Committee is RECOMMENDED to:**

- (a) Endorse the proposed amendment to review and bring the definition of a Key Decision into the main body of the text with the addition of consultation arrangements for Key Decisions taken by officers;**
- (b) Note the administrative changes that the Monitoring Officer intends to make to update the Constitution to bring clarity and correction to it;**
- (c) Endorse the proposal that the Monitoring Officer should bring forward proposals to this Committee after the May 2021 County Council elections in the 3rd cycle of meetings for this Committee, for achieving a full review of the structure and content of the Constitution.**

#### **Executive Summary**

2. Under the Constitution, the Monitoring Officer is required to monitor and review the operation of the Constitution to ensure that its aims, principles and requirements are given full effect. This includes making recommendations to Council on any necessary amendments. The Monitoring Officer is authorised to make any changes to the Constitution which are required to:
  - Comply with the law
  - Give effect to the decisions of Council (or Cabinet, Committees etc.)
  - Correct errors and otherwise for accuracy or rectification
3. Other changes will only be made by Full Council, following a recommendation of the Monitoring Officer, taking account of the views of this Committee.
4. This report sets out:
  - a. One change which would require Council approval - in relation to bringing the definition of a Key Decision into the main body of the text with the introduction of consultation arrangements for Key Decisions taken by officers
  - b. Several changes to be made by the Monitoring Officer to bring the Constitution up to date and/or to bring clarity or correction to it

- c. An outline approach to a review of the Constitution following the May 2021 elections.

## **Change for Council to approve – Key Decision**

- 5. A Key Decision is defined in Regulations as:

“An executive decision which is likely...to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates...or to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in the County.”

- 6. As such, Key Decisions are normally published in advance, in the Council’s Forward Plan, with an indication as to the decision maker, be that full Cabinet, an individual Cabinet Portfolio Holder or an officer. Under the Council’s Scheme of Delegation, officers can take Key Decisions in certain circumstances.
- 7. In practice, the Constitution currently sets out the description of a Key Decision in a footnote in Article 14 (Decision Making). I am suggesting that the definition should be reviewed and moved into the main body of Article 14. It is also suggested that Full Council be asked to amend the Article to strengthen the consultation requirement on officers when they are exercising a delegation to make a Key Decision. The Article could usefully include words to the effect that:

“Officers taking a Key Decision within this definition may only do so after consultation with the relevant Cabinet Member(s) and the Section 151 Officer.”

## **Administrative Changes – update, clarification and correction**

- 8. As Monitoring Officer, I intend to use my delegation to make the changes indicated in the table below.

Article 6 – The Cabinet	Update to reflect in-year changes to portfolio holders and the service areas for which members of Cabinet are responsible. And to clarify the tenure of the Leader of the Council in law.
Article 13 – Officers	Remove stray words in relation to 3(i).
Part 3.1A – Virtual Meetings Procedure Rules	To clarify that the supply of public speaker statements is voluntary and not compulsory and only to be used on the speaker's behalf by officers if the speaker's connection to a virtual meeting fails, so as not to deny the

	opportunity of their contribution to be heard.
Part 4.1 – Membership of Cabinet and Shadow Cabinet	Update to reflect in-year changes.
Part 4.2 – Cabinet Procedure Rules	Clarify that, in law, the Leader retains all executive powers, with discretion to make and amend delegations.
Part 10.1 – Members’ Allowances Scheme	Update to reflect the current year’s values of the Basic and Special Responsibility Allowances
Generally, for accuracy	Remove outdated references to the ‘suspension’ of councillors which is no longer a legal possibility (e.g. Part 2 Article 6, The Cabinet) under the ethical standards framework
Reflect the UK’s leaving of the European Union (EU)	Remove references (particularly within the Contract Procedure Rules) to membership of the EU.

## Potential approach to reviewing the Constitution – after the May 2021 County Council election

9. The Council’s Constitution has not undergone a thorough review for several years. An Annual Review, such as the present report reflects, allows an opportunity to make certain individual changes, and to give transparency to the Monitoring Officer’s in-year administrative amendments.
10. It is suggested that it may be appropriate, and timely following the May 2021 County Council elections, for the Council to undertake a more directed review of the structure and content of the Constitution later in the year.
11. The Council’s current Constitution follows the Model Constitution put forward nationally some years ago. A more flexible and user-friendly structure could be achieved in the light of emerging best practice.
12. Additionally, several sections of the Constitution have not been revisited in any detail for a number of years. The **annex** to this report outlines some of the sections which the Council could well consider reviewing from first principles. Several of these were suggested by Councillors following a recent consultation seeking their thoughts on areas of potential change.
13. It may also be timely to review the Constitution in the light of the Council’s commitments to equality, diversity and inclusion. The changing context of the coronavirus pandemic will also provide the Council, post-election, with a fresh perspective on potential Constitutional arrangements. This might particularly be the case, for example, if there are changes to the legislative framework for holding virtual meetings or the adoption of hybrid arrangements (i.e. virtual and in person), if this is permissible. As such, it would be appropriate for a newly

elected Council to take ownership of its Constitution. It would also be a useful time to review what other bodies may need to be included in the Constitution, for transparency and to reflect our statutory duties. (Although, the Monitoring Officer, does have delegated authority to update the Constitution to comply with the law.)

14. It is therefore proposed that the Monitoring Officer should bring forward proposals to this Committee, following the election, on options for achieving a structured review of the Constitution. For example, such a review could involve a cross-party working group generating member views, with this Committee then making recommendations to Council for change, with a process in place for ongoing annual review.

### **Financial Implications**

15. There are no financial implications directly relating to, or arising from, the recommendation in this report.

### **Legal Implications**

16. The Council has a legal duty to maintain a Constitution and to keep it up to date. This report fulfils the duty to keep the Constitution up to date and makes proposals for maintaining it into the future.

### **Equality Implications**

17. The recommendations in this report do not themselves raise equality implications. However, keeping the Constitution up to date is important to its accessibility. The recommendation for bringing forward proposals for reviewing the Constitution involves a recognition that any such proposals for review would need to ensure a diversity of views and an emphasis on achieving a Constitution that engages everyone in our communities.

### **ANITA BRADLEY**

Director of Law & Governance and Monitoring Officer

Background papers: Nil

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