

Cheltenham Borough Council
Council – 20 July 2015
Constitution Working Group - Review of the Constitution

Accountable members	Constitution Working Group Cabinet Member Corporate Services, Councillor Jon Walklett
Accountable officers	Borough Solicitor Democratic Services Manager
Ward(s) affected	None directly
Significant Decision	No
Executive summary	This report sets out the recent work and recommendations of the Constitution Working Group for consideration by Council.
Recommendations	<p>That Council:</p> <ol style="list-style-type: none"> 1. Approves the revised <ol style="list-style-type: none"> 1.1 Access to Information Rules – Appendix 2 1.2 Employment Rules – Appendix 3 1.3 Rule 2.13 Council Procedure Rules – Appendix 4 1.4 Rules 5.3 and 15.3 Committee Procedure Rules and Overview & Scrutiny Rules – Appendix 5 2. Appoints the two independent persons on Standards Committee to Disciplinary Committee for such term as is necessary for the purpose of making recommendations to Council on disciplinary action against a statutory officer and, in the event of one or both of those persons not being available, to authorise Disciplinary Committee to appoint for the same term and purpose an independent person or persons from another local authority's Standards Committee 3. Agrees to amend Committee Procedure Rule 3 (Substitute Members) as proposed in paragraph 5 of this report 4. Approves the miscellaneous changes set out in Appendix 6 5. Agrees the inclusion as appendices to the Constitution of the documents in Appendix 7-9 6. Delegates to the Borough Solicitor authority to make any textual or other amendments which are necessary to ensure accuracy,

	consistency and legality of the Constitution when incorporating the revisions authorised by Council.
Financial implications	<p>There are no financial implications arising from this report. In the event of a disciplinary process being necessary under the Employment Rules, the Regulations cap the sums paid to an Independent Person sitting on the Disciplinary Committee to any allowance received under the conduct regime.</p> <p>Contact officer: Paul Jones, paul.jones@cheltenham.gov.uk 01242 775154</p>
Legal implications	<p>As referenced in the report.</p> <p>Contact officer: Peter Lewis , peter.lewis@tewkesbury.gov.uk, 01684 272012</p>
HR implications (including learning and organisational development)	<p>As contained in the report.</p> <p>Once approved, it is essential that all relevant employees are briefed on the changes to the Employment Rules and any HR documentation and/or HR policies are updated to reflect the changes.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk 01242 264355</p>
Key risks	See attached risk assessment – Appendix 1

1. Background

- 1.1 The Constitution Working Group (CWG), which is the Member Group with responsibility for reviewing the Constitution, has met on 3 occasions since December 2014. The Group has been chaired by Councillor Colin Hay and supported by the Borough Solicitor, Democratic Services Manager and officers from their teams.
- 1.2 The CWG has focused on reviewing the Access to Information Rules, Employment Rules, Council Procedure Rules and Committee Procedure Rules. Further detail on these matters is set out below. The CWG recommends the proposed changes for approval by Council. Once approved, the master version (which is stored electronically on the council's website), will be updated and the changes will then take effect.

2. Access to Information Rules

- 2.1 The Access to Information Rules were last substantially reviewed in October 2008 and the CWG has undertaken a comprehensive review of the Rules to ensure that they are fit for purpose and reflect the current legislative requirements.
- 2.2 In particular, the Rules now include the right for the public to report on public meetings and make provision for officer decisions which need to be published.
- 2.3 The Guide to Recording and Publication of Officer Decisions (Appendix 7) has been reviewed and it is proposed that this be included as an appendix to the Constitution.

- 2.4 Guidance for reporting on Council, Cabinet and Committee Meetings has been prepared and is set out at Appendix 8. Again, it is proposed that this be appended to the Constitution.
- 2.4 The CWG considered that a diagrammatic chart showing the main decision making processes would be beneficial as a supplement to the Access to Information Rules. Two 'decision trees' have been produced (Appendix 9) and it is proposed that these be included in the Constitution appendices. It is intended that these diagrams will be refined and improved over time.

3. Employment Rules

- 3.1 The Employment Rules are intended to reflect the legislative provisions which specifically relate to the appointment and dismissal of senior local government officers and statutory officers. The Authority has three statutory officers – the Head of Paid Service, Chief Finance (section 151) Officer and Monitoring Officer (who is seconded to the Authority).
- 3.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came in to effect on 11 May 2015 and require the Authority to adopt amended standing orders in respect of dismissal of statutory officers. There is no longer a statutory requirement that a designated independent person be appointed to investigate and make a binding recommendation to the Authority in a case of disciplinary action being initiated against a statutory officer.
- 3.3 The Regulations provide for a new process whereby a statutory officer can only be dismissed by Council following recommendations received from an independent panel of members. In order to achieve independence, at least two independent persons (appointed for the purposes of the local standards regime under the Localism Act 2011) must 'be invited' to sit on the panel. It is proposed that the Disciplinary Committee, which already has in its terms of reference disciplinary matters in respect of senior and statutory officers, undertakes the role of the independent panel by appointing to it the two independent persons (for the time being) of Standards Committee. It is proposed that the independent persons shall only sit on the Committee when it is considering disciplinary action against a statutory officer.
- 3.4 If one or more independent persons from the authority's own Standards Committee are not available to sit on the Panel, then the Regulations provide that the authority must invite one or more independent persons who sit on the Standards Committee of another local authority or authorities. It is proposed that this should be the agreed default position, in other words, that in the event of their not being two independent persons available from the Authority's Standards Committee to sit on Disciplinary Committee then replacement independent persons from another local authority or authorities shall be appointed by Disciplinary Committee.
- 3.5 Whilst amending the Employment Rules to reflect the new legislative requirements, the opportunity has been taken to generally tidy up the Rules for clarity and consistency. Also, Rule 2 'Recruitment and Appointment' has been amended to be consistent with the Authority's current employment procedures for recruitment of staff.

4. Rule 2.13 Council Procedure Rules and Rule 5.3 Committee Procedure Rules/Rule 15.3 Overview & Scrutiny Rules

- 4.1 The CWG has considered whether it was appropriate for Annual Council and Extraordinary Council meetings to consider items other than those for which the meeting had been specifically called.
- 4.2 It was agreed that paragraph f) in Rule 2.13 should be removed from the order of business for an Extraordinary Meeting of Council. This would not preclude statutory officers from bringing a report because it was connected with the business of the meeting or, if it was urgent, it could be considered under paragraph g). The revised Rule is at Appendix 4.

- 4.3** With regard to the Annual Meeting of Council, CWG acknowledged that the order of business would allow reports and motions to be put forward although it was accepted as custom and practice that this meeting dealt solely with the appointment of the Mayor and Deputy Mayor and was immediately followed by the inauguration ceremony. Therefore, CWG is not recommending that the order of business changed at this time. Should there be a need to add any business to the agenda for the Annual Meeting this could be accommodated through an earlier start time if necessary.
- 4.4** For consistency, Rule 5.3 of the Committee Rules and Rule 15.3 Overview & Scrutiny Rules are also proposed for amendment, again on the basis that an extraordinary meeting of a committee should focus on the matter for which it has been called. The revised Rules are at Appendix 5.

5. Rule 3 – Committee Procedure Rules

- 5.1** The Committee Rules of Procedure include the following provisions:-

Rule 3 – SUBSTITUTE MEMBERS

Rule 3.4 Regulatory Committees

3.4 No substitute Members shall participate in a Regulatory Committee until they:

- have undergone the same initial training as required of full Members of the Committee;
- have participated in all on-going training as provided for full Members of the Committee;
- have, after the initial period of three months following the introductory training, attended either as a substitute member or an observer not less frequently than every third meeting of the Committee

and their compliance with these conditions has been certified by the relevant officers.

- 5.2** With regard to the third bullet point, requiring a minimum level of mandatory attendance by members of the Planning / Licensing Committees, there is no corresponding requirement for Committee Members and consequently it would be permissible for a Member of the Committee to miss 3 consecutive meetings of the Committee whereas it would not be permissible for a Substitute Member to do so.
- 5.3** The Authority's planning officers raised questions regarding the application of the Rule 3.4 wording with the Borough Solicitor and, accordingly, the CWG considered this inconsistency with a view to recommending that Council regularise the position. The CWG recognised that it is good practice for Members and Substitute Members to be fully up to date with any training requirements for participating at Regulatory Committees and considered it to be essential for this provision to be retained. However, the requirement for attending one in every three meetings as substitute or observer seemed to the Working Group to be relatively arbitrary, particularly as it is not replicated as a requirement for Members of the Committee.
- 5.4** Planning Committee Members were consulted on the matter and, having considered responses received, the Working Group was of the view that the requirement for all members of a Regulatory Committee to attend appropriate training before sitting on the committee should suffice and that it should be for individual Members (both Committee and Substitutes) to ensure that they attend training and maintain their level of knowledge and experience by attending

meetings either as a member or as an observer at an appropriate frequency. On that basis it is proposed that the third bullet point be deleted from Rule 3.4.

6. Miscellaneous Matters

- 6.1** The opportunity has been taken to make a number of other changes to the Constitution to ensure that it is consistent and up to date with legislation and changing circumstances. These changes are set out in the table in Appendix 6.

7. Reasons for recommendations

- 7.1** To ensure that the Council's Constitution is up to date.

8. Alternative options considered

- 8.1** None.

9. Consultation and feedback

- 9.1** Consultation on the proposed change to Committee Rule 3 has been undertaken with Planning Committee.

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Access to Information Rules 3. Employment Rules 4. Council Procedure Rules (Rule 2.13) 5. Committee Procedure Rules (Rule 5.3)/ Overview and Scrutiny Rules 15.3 6. Table of Miscellaneous Changes 7. Guide to Recording and Publication of Officer Decisions 8. Guidance for the Recording of Council, Cabinet and Committee Meetings 9. Diagrams of Decision Making Processes
Background information	Council Constitution

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the Constitution is not regularly reviewed there is a risk of decisions being made outside of due process	Borough Solicitor	27/06/2015	2	2	4	Reduce	Ensure robustness of the Decision Making processes in the Constitution	20/7/15	Borough Solicitor	
	If we do not take steps to improve understanding of the Constitution there is a risk that officers and members may not fully understand the implications of a proposed course of action.	Democratic Services Manager	27/06/2015	2	2	4	Reduce	Include appropriate appendices in the Constitution to aid understanding and encourage officers and members to refer to it as a reference guide.	31/10/15	Democratic Services Manager	