

Cheltenham Borough Council
Council – 14 October 2019
Review of the Constitution

Accountable members	<p>Constitution Working Group</p> <p>Cabinet Member Corporate Services, Councillor Alex Hegenbarth</p>
Accountable officers	<p>Head of Law-Litigation and Business Development, One Legal</p> <p>Democratic Services Team Leader</p>
Ward(s) affected	<p>None directly</p>
Significant Decision	<p>No</p>
Executive summary	<p>This report sets out the recent work and recommendations of the Constitution Working Group for consideration by Council.</p>
Recommendations	<p>That Council:</p> <ol style="list-style-type: none"> 1. Determines the criteria for submitting Public Questions (Parts 4A, 4B, 4C and 4D) 2. Approves the revised: <ol style="list-style-type: none"> 1.1 Procurement rules in Part 4I Contract Rules and Article 14 Finance, Contracts and Legal Matters 1.3 Amendments to the Appointment of Substitute Members of Committees (Parts 4A and 4C) 1.4 Amendments to Voting on Appointments at Council (Part 4A) 1.5 Petition Scheme (Appendix H) 3. Approves the change of the name of the Audit Committee to the Audit, Compliance & Governance Committee 4. Approves the Chair of the Investigating and Disciplinary Committee or its equivalent be given authority where appropriate and in a case of urgency to suspend a Relevant Officer(as defined by the Local Authorities (Standing Orders) (England) Regulations 2001) 5. 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>The changes to the procurement and contract rules are set out in Section 2 of the report.</p> <p>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 264365.</p>
Legal implications	<p>As referenced in the report.</p> <p>Contact officer: Sarah Farooqi, sarah.farooqi@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@publicagroup.uk 01242 264355.</p>
Key risks	<p>See attached risk assessment – Appendix 1</p>

1. Background

1.1 The Constitution Working Group (CWG), which is the Member Group with responsibility for reviewing the Constitution, has met on two occasions since September 2018. The Group has been chaired by Councillor Dennis Parsons and supported by the Head of Law-Litigation and Business Development, One Legal, the Democratic Services Team Leader and officers from their teams.

2. Procurement and Contract Rules

2.1 Under the current Constitution the purchase of supplies, services and works with a value below £10,000 require a best value process. The contract is by way of a set of terms and conditions. There is a link to those terms in the purchase order.

2.2 Over £10,000, a competitive process is required through the procurement e-portal via Publica Procurement and a formal contract is prepared by One Legal.

2.3 These existing threshold values are deemed to be no longer commercially fit for purpose. The financial limits have been in place for approximately 20 years and during this time, inflation has reduced the buying power of the existing £10,000 threshold. It is considered that the requirement to conduct a full competitive procurement process for purchases above £10,000 has a negative impact on the Authority's ability to do business in a timely and cost effective manner to deliver best value.

2.4 Accordingly, the Constitution Working Group propose the following thresholds ;

- **£0-£10,000;** no change except that if quotes are sought, they should be obtained through the Authority's self-service e-portal.
- **Above £10,000 to £25,000;** 3 written quotes via the self-service e-portal. There will no longer be a requirement for a formal contract to be prepared by One Legal; instead the standard terms and conditions currently applicable for purchases below £10,000 will be used.
- **Above £25,000;** A full competitive tender through Publica Procurement and the e-portal will be required.

- 2.5** Officers have made other changes to the Contract Rules (summarised below) which the Constitution Working Group proposes are accepted;
- The deletion of the 'bulk purchasing' waiver which is no longer required.
 - The introduction of a new circumstance in which a waiver may be granted to allow for the novation/assignment of contracts relating to a building being acquired by the Authority or a service being brought back in house.
 - Updated provisions about the use of the e-portal.
 - Amendments required due to the UK's withdrawal from the European Union. The Contract Rules may need to be further updated depending upon whether the UK has a 'deal' on Withdrawal Day.
 - To correct minor inconsistencies with the remainder of the Constitution

3. Eligibility for Submitting Public Questions

3.1 The Constitution Working Group considered the criteria for submitting a Public Question (outlined in Parts 4A, 4B, 4C of the constitution), the issue having been raised for the attention of the group by a Member. The criteria for signing petitions under the council's formal petition scheme (Appendix H of the constitution) and more widely the criteria for standing for election as a Councillor is to live, work or study in the borough. Under current rules a public question will only be accepted if the person asking the question is a registered local government elector for the Borough of Cheltenham.

3.2 The Constitution Working Group felt that there may be instances where those not registered local government electors could expect to be able to use this process to obtain an answer from the authority provided the question was appropriate, legitimate and reasonable. However, they request Council to determine whether the criteria should be expanded.

4. Structures required to manage model disciplinary procedure

4.1 The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) provide a statutory process for considering employment matters relating to certain Relevant Officers i.e. Head of Paid Service, Monitoring Officer and Section 151 officer.

4.2 The Regulations require that the council takes into account any advice, views or recommendations of an independent panel before a Relevant Officer can be dismissed, for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract unless the authority has undertaken to renew that fixed term contract.

4.3 Although it is hoped that a council never needs instigate the process it is recommended that councils should have certain procedures in place to deal with any disciplinary issues relating to its Relevant Officers.

4.4 A Disciplinary Committee has been established to carry out the functions and responsibilities under the Regulations of an Investigating and Disciplinary Committee. An Appeals Committee has also been established.

4.5 The Disciplinary Committee has the authority to suspend but there is no provision that allows for immediate suspension in the case of urgency.

4.6 The Constitution Working Group therefore proposes the Constitution be amended to make provision for immediate suspension in the case of urgency

4.7 It is suggested that this power might be held by the Chair of the Investigating and Disciplinary Committee or its equivalent. For Cheltenham this would be the Chair of the Disciplinary Committee.

- 4.8 Given the potential consequences for both the employee and council it is recommended that this power would be only exercised following consultation with Human Resources.
- 4.9 It is also recommended that the power to suspend immediately would be limited and that it would only incur if an exceptional situation arises whereby allegations of misconduct are such that the remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority.
- 4.10 The continuance of a suspension should be reviewed after it has been in place for two months.

5. Appointment of Substitute Members of Committees

- 5.1 Constitution Working Group considered the scenario where a Political Group on the Council had less than 10 Members and where the nominated substitute could not attend a meeting. It recommends Council consider a proposed amendment to paragraph 14.7 of Part 4A of the Council Procedure Rules and paragraph 10.3 of Part 4C of the Committee Procedure Rules to enable a Political Group on the Council with less than 10 Members to appoint one additional substitute for any committee, which, for Regulatory Committees, could be a Member from another Political Group or an Independent Member, provided they have fulfilled training requirements.

6. Voting on appointments at Council

- 6.1 Constitution Working Group proposes that Council consider the following clarification of paragraph 14.7 of Part 4A of the Council Procedure Rules as follows: If there are more than two people nominated for any position to be filled and there is not a majority of votes in favour of one person, the name of the person with the lowest number of votes will be taken off the list and a new vote taken. In the event of more than one person having the lowest number of votes, the Mayor shall have a second and casting vote to determine who shall be taken off the list. The process will continue until there is a majority of votes for one person.

7. Petition Scheme

- 7.1 The council's Petition Scheme (Appendix H of the Constitution) has been updated for clarity and accuracy and now includes the following:
- The condition "We do not accept a petition that relates to a decision of Council or a committee made in the previous six months and has been subject to public consultation."
 - The sentence "You are deemed to have 'signed' an electronic petition if you have added your name and address". This clarifies that those signing an e-petition do not have to provide a physical signature."
 - Flowcharts in order to aid public understanding. The proposed amended scheme is attached at Appendix 4.

8. Miscellaneous Matters

- 8.1 **Audit Committee-** Change of name: Upon the request of the Chair of Audit Committee the Constitution Working Group considered and approved of the proposed change of title of the Audit Committee to the Audit, Compliance and Governance Committee to reflect more accurately its terms of reference.
- 8.2 The opportunity has also been taken to update the Policy Table at Appendix C of the Constitution and 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.

9. Reasons for recommendations

- 9.1 To ensure that the Council's Constitution is up to date and in accordance with current legislation.
- 9.2 To ensure the authority's ability to do business in a timely and cost effective manner in order to deliver best value.

10. Alternative options considered

- 10.1 None.

11. Consultation and feedback

- 11.1 Consultation on the proposed changes has been undertaken with the Executive Director Finance and Assets, One Legal, Procurement, Constitution Working Group

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Appendices	Appendix 1 – Risk Assessment
Background information	Council Constitution

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/Democratic Services Team Leader	14/10/19	2	2	4	Reduce	Ensure robustness of the Decision Making processes in the Constitution		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 Team Leader/Strategy and Engagement Manager	14/10/19	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.		Democratic Services Team Leader	
	The potential increases in limits within the financial rules could increase the risk of inappropriate use of public funds.	Section 151 Officer	14/10/19	3	2	6	reduce	The supporting financial control processes (within the existing financial management system / new ERP) and the Financial Services business		Section 151 Officer	

								partnering role coupled with formal budget monitoring arrangements ensure that this risk is minimised.			
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