

# Cheltenham Borough Council

Council – 26 March 2012

## Constitution Working Group - Review of the Constitution

<b>Accountable member</b>	<b>Cabinet Member Corporate Services – Councillor Colin Hay</b>
<b>Accountable officers</b>	<b>Director of Resources, Director of Commissioning and the Borough Solicitor</b>
<b>Accountable scrutiny committee</b>	<b>Economy and Business Improvement</b>
<b>Ward(s) affected</b>	<b>None specifically</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>This report takes forward the decisions of the Council made in October and December 2011 in approving a revised Part 3 of the Constitution – Responsibility for Functions, revised Finance Rules and new arrangements for Overview and Scrutiny. The Constitution Working Group has now met on a number of occasions to consider the amendments which are necessary to the Council's Constitution to reflect the decisions referred to above and other changes which have been made over the past two years. Revisions are also necessary to the Contract Rules to reflect the new arrangements which will be in place when the GO shared service is implemented on the 1st April 2012. The report recommends significant changes to the Overview and Scrutiny Rules, the Budget and Policy Framework Rules (set out in Appendices 1 and 3 respectively) consequent upon the new approach to the Responsibility for Functions and the Overview and Scrutiny changes.</p> <p>The Council is being asked to approve further revisions to Part 3 of the Constitution – Responsibility for Functions which has been further reviewed following approval in principle by the Council in October 2011 (Appendix 4).</p> <p>The Articles of the Constitution (Part 2) have been revised and updated and are attached at Appendix 5.</p> <p>Further textual amendments to the Constitution as a whole will be necessary once the Council has made its decisions based on this report, as well as to correct any typographic or other inconsistencies or inaccuracies and it is proposed that authority for these corrections, which will not materially alter the Constitution as approved by the Council, is delegated to the Borough Solicitor who will also, in consultation with the Constitution Working Group, reformat the document into a comprehensive and concise form. This work will include devising a Public Participation Scheme to be appended to the Constitution which will bring together into one document, the various ways in which the public can participate in Council business.</p> <p>The report recognises that there will be further amendments to be made later in the year when the implications for the new conduct regime arising from the Localism Act 2011 have been assessed and considered by the</p>

	<p>Council.</p> <p>The Working Group is suggesting some minor changes to the Council Rules of Procedure to slightly extend the timescale for the submission of Member and Public questions to Council and is seeking a view from the Council as to whether it wishes to change the procedure which is used at Council to deal with Motions on Notice. The variations which are put forward for consideration at Appendix 7 would allow Motions to be referred to Cabinet or to Committee as an alternative to debating the Motion at the Council meeting for which Notice is given in order that full information and professional advice may be obtained before a decision on the Motion is taken.</p> <p>Finally, the report seeks Council approval for a revised Employee Code of Conduct which has been comprehensively reviewed and is recommended by the Standards Committee to be adopted as set out at Appendix 8.</p> <p>With the exception of the Finance Rules and Contract Rules which will be implemented on the 1st April 2012, the remaining amendments will take effect from the new municipal year in May 2012.</p>
<p><b>Recommendations</b></p>	<p><b>The Council is asked to</b></p> <ol style="list-style-type: none"> <li><b>1. Approve the revised Overview &amp; Scrutiny Rules – Appendix 1.</b></li> <li><b>2. Approve the revised Indication of Terms of Reference for Overview &amp; Scrutiny Sub-Committee – Appendix 2.</b></li> <li><b>3. Approve the revised Budget and Policy Framework Rules – Appendix 3.</b></li> <li><b>4. Approve the revised Part 2 Articles 1-16 – Appendix 5.</b></li> <li><b>5. Approve the Part 3 Responsibilities for Functions set out in Appendix 4 and the Policy Table in Appendix 4 SUBJECT to the Leader approving the Executive Functions set out in Part 3E (Appendix 4) to take effect from the new municipal year in May 2012.</b></li> <li><b>6. Approve the increase of the membership of the Audit Committee from 5 to 7 members as set out in 5.7.</b></li> <li><b>7. Approve the Contract Rules set out in Appendix 6 for implementation on the 1<sup>st</sup> April 2012.</b></li> <li><b>8. Approve the amendment to Rule 12 of the Council Procedure Rules – Public and Members Questions, as set out in paragraphs 7.2 and 7.3 of the report.</b></li> <li><b>9. Consider whether or not to make any amendment to Rule 5 of the Council Procedure Rules – Motions on Notice as referred to in paragraph 7.4 of the report.</b></li> <li><b>10. Delegate to the Borough Solicitor, in consultation with the Constitution Working Group , authority to</b> <ol style="list-style-type: none"> <li><b>i. reformat the Constitution and to make any textual or other</b></li> </ol> </li> </ol>

	<p><b>amendments which are necessary to ensure accuracy and consistency but which do not materially affect the Constitution as approved by the Council.</b></p> <p><b>ii. devise a Public Participation Scheme to draw together in one Appendix to the Constitution, the various ways in which the Public may participate in Council business.</b></p>
<b>Financial implications</b>	<p>The revisions to the budget and policy framework reflect to revised scrutiny arrangements and to clarify the procedure for decisions outside the budget and policy framework.</p> <p>The contract rules have been developed and are largely common to all GO partners. This will ensure that the opportunities for shared procurement are maximised, will standardise the Agresso build process and simplify the arrangements for officers in the shared service working across multiple sites.</p> <p>The proposed changes to audit committee membership will address some of the practical issues recently experienced with having a quorate meeting.</p> <p>Overall, the revisions to the budget and policy framework, financial rules (already agreed) and contract rules proposed allow for increased officer flexibility, within limits, at the same time as strengthening the corporate financial governance of the council.</p> <p><b>Contact officer: Mark Sheldon, <a href="mailto:mark.sheldon@cheltenham.gov.uk">mark.sheldon@cheltenham.gov.uk</a>, 01242 264123</b></p>
<b>Legal implications</b>	<p>Contained in the report.</p> <p><b>Contact officer: Sara Freckleton , <a href="mailto:sara.freckleton@tewkesbury.gov.uk">sara.freckleton@tewkesbury.gov.uk</a>, 01684 272011</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>There will need to be employee and member awareness of the key changes, in particular regarding the Code of Conduct, scheme of delegations, budget and policy framework, and contract rules so that all are clear about the respective roles and accountabilities. Awareness of the revised scrutiny arrangements is already under way.</p> <p><b>Contact officer: Amanda Attfield , <a href="mailto:amanda.attfield@cheltenham.gov.uk">amanda.attfield@cheltenham.gov.uk</a>, 01242 264186</b></p>
<b>Key risks</b>	<p>See attached risk assessment – Appendix 0.</p>

## 1. Background

- 1.1** On the 10<sup>th</sup> October 2011, the Council approved in principle, a revised Part 3 of the Constitution Responsibility for Functions. This represents a fundamentally different approach to the Responsibility for Functions which is drafted on the basis that the functions delegated to Committees, Cabinet and Cabinet Members are prescribed in greater detail than at present, with those functions not so prescribed being exercised by Officers. This provides greater clarity as to the functions exercised by Members and provides for more flexibility within the Officer delegations. The effectiveness of the revisions is reliant upon sufficient safeguards elsewhere in the Constitution, particularly in Part 2 Article 13 (Principles of Decision Making).
- 1.2** At the same meeting, the Council approved revised Financial Rules to reflect the Council's current Political and Management Structures and also to be generic between the GO partners, with local

variation where necessary. The Rules will take effect from 1<sup>st</sup> April 2012. The Contract Rules have now been revised on the same basis in conjunction with the GO partners and are now placed before the Council for approval in Appendix 6.

- 1.3** On the 12<sup>th</sup> December 2011, the Council approved revised Overview and Scrutiny arrangements in which the current 3 O&S committees will be disbanded and replaced by a single Overview and Scrutiny Committee and task and finish groups. In approving the new arrangements, the Council endorsed a number of key principles which were set out in the report. The Constitution Working Group was requested to review the constitutional changes required to support the new arrangements for approval by the Council in March 2012. This work has now been completed and the recommended changes to the Constitution are described in section 2 below. The Council also authorised Officers to develop the detailed procedures and processes to support the new arrangements ready for implementation following the Borough elections in May. Work is underway, pending the Council's approval to the changes set out below, and a Protocol is being developed to provide guidance to Members and Officers on the new arrangements. This will be used as the basis for the induction training for members in May.
- 1.4** The Constitution Working Group has now completed its review and is seeking the Council's approval to the recommended revisions which are set out in the Appendices to this report. This concludes the work on revisions to the Constitution which has been ongoing for the past 2 years and which has been approved by the Council previously at various times. Some of the changes already approved have been implemented, the changes to the Financial Rules and the Contract Rules will be implemented from 1<sup>st</sup> April 2012 and the remaining changes to the Constitution which are recommended in this report will take effect from the next municipal year in May 2012. In the intervening period between the March Council meeting and the start of the municipal year, the opportunity will be taken by the Borough Solicitor, in consultation with the Constitution Working Group to revise the format of the Constitution and also to correct any minor errors or inconsistencies which do not materially affect the Constitution as approved by the Council.

## **2. Overview and Scrutiny arrangements**

- 2.1** In order to bring into effect the changes to the Overview and Scrutiny arrangements which were approved by the Council in December 2011 and in 1.3 above, the Overview & Scrutiny Rules (Appendix 1) have been amended and generally updated for that purpose.
- 2.2** Provision has been made within the Rules for the setting up of and reporting processes for Scrutiny Task Groups which will operate on the basis of Member / Officer Working Groups. There is also the option for the O&S Committee to set up one or more sub-committee(s) to undertake functions on its behalf. In order to give an indication as to the type of terms of reference which may appropriately be selected by the O&S committee, Appendix 2 is attached for information.
- 2.3** Council will note that Rule 8 - Councillor Calls for Action has been included to set out clear processes by which the statutory obligation to deal with a Councillor Call for Action will be facilitated.
- 2.4** The procedures for "call in" of decisions in respect of Executive functions set out in Rule 14 have been comprehensively reviewed and extended to aid clarity and to facilitate the involvement of a scrutiny task group or sub-committee in the "call in" processes. In order to ensure that "call in" matters are dealt with expeditiously so that implementation of decisions is not unreasonably delayed, a backstop time limit of 60 clear working days between the receipt of the "call in" and Council making its final decision on the matter has been specified.

## **3. Part 4G Budget and Policy Framework Procedure Rules**

- 3.1** These Rules have been updated for clarity and for consistency with the proposed revisions to the Overview and Scrutiny Rules. The proposed revisions which are recommended to the Council are attached at Appendix 3.

#### **4. Part 3 of the Constitution – Responsibility for Functions**

- 4.1** The overall approach to the allocation of responsibility for the Authority's functions was approved by the Council and Cabinet in October 2011. Further revisions are now put forward, building on the approved principles to give more detail and to provide consistency of approach with other parts of the Constitution as referred to in this report. This also reflects the responsibility of officers for various functions taking account of new arrangements which will be in place from 1<sup>st</sup> April 2012 (e.g. GO). The revised Part 3 is attached at Appendix 4.
- 4.2** Table 2 of Part 3C recommends an amendment to the remit of the Appointments Committee to include responsibility for determining policies relating to employee remuneration and accordingly it is recommended that the name of the Committee be changed to Appointments and Remuneration Committee.
- 4.3** The functions for the new Overview and Scrutiny Committee are set out in Table 3 of Part 3C (Appendix 4).
- 4.4** The Policy Table which was referred to the Council in October 2011 as part of the revisions to Part 3 has also been updated. This Table is cross referenced in the new Part 3 and is intended to set out which parts of the Authority are responsible for which policies etc. and who the Lead Members / Officers are together with other information such as when the policy etc. is to be reviewed. The table includes those policies which comprise the Policy Framework, i.e. those which are produced by the Executive and approved by Council.

#### **5. Part 2 - Articles of the Constitution**

- 5.1** The Articles of the Constitution have been amended in order to be consistent with changes made elsewhere to the Constitution. In particular, Article 13 has been substantially amended consequent upon the revisions to Part 3, the Overview and Scrutiny Procedure Rules, and the Budget and Policy Framework Rules.
- 5.2** Articles 1 – 16 are attached at Appendix 5 for Council's approval. These have not been completely re-written, but have merely been updated and, wherever possible, made more concise.
- 5.3** Article 3 relates to Members of the Public and the Council. The Working Group proposes that a separate Appendix will be drawn up setting out comprehensively the various ways in which the public can participate in Council business (e.g. Petitions, Questions etc) and giving detailed information about the procedure and time limits involved. It is considered that this would be much more helpful than the present arrangements where the various ways in which the public can participate are found in different parts of the Constitution. Article 3 will then simply refer to the Public Participation Scheme and give a high level summary of the Public Participation Scheme. It is intended that the drafting of the Public Participation Scheme be delegated to the Borough Solicitor in consultation with the Constitution Working Group.
- 5.4** Article 9 which relates to the Standards Committee has not been amended pending consideration of the changes to be made under the Localism Act 2011 which are referred to in section 8 below.
- 5.6** Article 17 is the Interpretation section of the Constitution in which the words and phrases used throughout the document are defined. This will need to be revised following the Council's decision on this report. As the interpretation is a factual matter, it is suggested that the revision of Article 17 can be delegated to the Borough Solicitor.
- 5.7** The Constitution Working Group considered the membership of the Audit Committee and was of the view that it should be increased from 5 to 7 members.

## **6. Part 4I – Contract Rules**

**6.1** The Contract Procedure Rules have also been refreshed in the context of the GO partnership and, as was the case with the Financial Procedure Rules, the partner Councils have worked together to achieve a common form of Contract Rules and Council approval is now sought for the revisions which are attached at Appendix 6 for implementation on the 1<sup>st</sup> April 2012.

## **7. Part 4A - Council Procedure Rules**

**7.1** The Working Group is not recommending any significant changes to the Council Procedure Rules but is suggesting some minor adjustment to the rule on Member and Public Questions and would like the Council to consider whether an amendment should be made to the procedure for dealing with Motions on Notice which are submitted to the Council.

**7.2** The current deadline for the submission of Member and Public questions under Council procedure Rule is 10.00 on the 5<sup>th</sup> Working Day before the day of the meeting. This allows the period of only one working day between the statutory deadline for publication of the agenda and the submission of questions. In order to ensure that both Members and the Public have an opportunity to consider the agenda for a Council meeting ahead of the deadline for the submission of questions, the Working Group considered that the deadline should be extended to midday on the 4<sup>th</sup> Working Day before the day of the meeting. This will mean that, giving as an example the last Council meeting (24<sup>th</sup> February), the agenda was published on the Thursday 16<sup>th</sup> February and the deadline for Public and Member questions was 10.00 a.m. on Friday 17<sup>th</sup> February whereas, under the revision proposed by the Constitution Working Group the deadline would have been midday on Monday the 20<sup>th</sup> February.

**7.3** In respect of questions submitted by Members of the Public, Rule 12 currently allows a member of the public who has submitted a question but is not present at the meeting, to ask the Mayor to read out the question on their behalf. In the absence of any request the question is taken as read. The Working Group proposes a slight amendment to the Rule to the effect that where a question is submitted but the questioner is not present at the meeting, the question and response are taken as read.

**7.4** Rule 5 of the Constitution (Motions on Notice) currently envisages that Motions duly submitted to the Council will be debated at that Council meeting, whether or not the Council has before it the necessary detailed information and any professional advice to inform the debate. The Working Group is seeking a view from Council as to whether an amendment should be made to Rule 5 either

1. to require that Motions are automatically referred to the Cabinet or
2. to decide without debate whether to deal with the Motions at the meeting or to refer it to the Cabinet or Committee for consideration, in each case a decision is taken.

Rule 5 as currently drafted together with an indication as to how 1 and 2 above may be effected is attached at Appendix 7.

## **8. Officer Code of Conduct**

**8.1** The Code of Conduct for Employees has been comprehensively reviewed and updated for the purpose of ensuring that the Authority's Employees operate to high ethical standards. The revised Code recommended by the Standards Committee is attached at Appendix 8 for Council approval.

## **9. Future changes**

**9.1** The Localism Act 2011 proposes a change to the current conduct regime, which is summarised in the Standards Committee Chairman's Annual report and will need to be put in place subject to regulations which have yet to be enacted. This will involve further changes to the Constitution and a report will be brought to the Council in due course.

## 10. Incidental matters

10.1 Once the Council has determined the amendments put forward in this report, it is proposed that the Constitution be reformatted and checked for accuracy and consistency prior to publication on the website ahead of the new municipal year in May 2012. There are a number of Appendices referred to within Part 3 (Appendix 1) which will be prepared and included in the final document. It is proposed that the web version be used by Members, rather than issuing a hard copy of the Constitution to each Member of the Council, a copy will be given to each Political Group, a copy will be maintained in the Members room. Therefore authority is being sought for the Borough Solicitor in consultation with the Working Group to reformat the Constitution and to make any textual amendments (including completion of footnotes) to the Constitution to correct any inaccuracies and typographical errors and to ensure consistency and clarity but which do not materially affect the Constitution as approved by Council.

## 11. Reasons for recommendations

11.1 To ensure that the Council's Constitution is up to date in readiness for the new municipal year in May 2012.

## 12. Alternative options considered

12.1 None.

## 13. Consultation and feedback

13.1 Consultation on the proposed Financial Rules has taken place with the GO partnership (Finance Officers) with the Senior Leadership Team, the Constitution Working Group and the Audit Committee.

13.2 Consultation on the proposed revised Part 3 has taken place with Officers, the Constitution Working Group and Cabinet.

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<b>Appendices</b>	0. Risk Assessment 1. Overview & Scrutiny Rules 2. Indication of Terms of Reference for Overview & Scrutiny Sub-Committee 3. Budget and Policy Framework Rules 4. Responsibility for Functions 5. Part 2 Articles 1-16 6. Contract Rules 7. Notice of Motion Procedure 8. Officer Code of Conduct
<b>Background information</b>	Council Constitution  Council – 10 October 2011 and 12 October 2011

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
	Legal risks of challenge to decisions and processes arising through occasional but not comprehensive review	Borough Solicitor	6/6/11	3	1	3	Reduce	Comprehensive review of constitution is being undertaken	31/5/2012	Borough Solicitor	
	The potential additional flexibilities / increases in limits within the financial rules could increase the risk of inappropriate use of public funds.	Section 151 Officer	28/9/11	3	1	3	Accept	The supporting financial control processes (within the existing financial management system / new ERP) and the Financial Services business partnering role coupled with formal budget monitoring arrangements ensure that this risk is minimised.	26/03/2012	Section 151 Officer	
	Risk of Officers decisions being made outside of due process	Borough Solicitor		2	2	4	Reduce	Ensure robustness of the Decision Making principles in the Constitution	26/03/2012	Borough Solicitor	



								Ensure that Officers understand scope and obligations and accountability for their decisions	31/07/2012	Chief Executive	
	Overview & Scrutiny Review – if any new arrangements are not supported by a change in culture across members and officers they may not be successful in delivering the outcomes required	Director of Commissioning	27/9/20-11	3	3	9	Reduce	Get members and officers buy in during the review by seeking their views and ideas.  Ensure training and development is available to support the implementation of the new arrangements.  Promote successes.	31/05/2013	Director of Commissioning	