

# Cheltenham Borough Council

**Council – 19 June 2023**

## Revisions to the Constitution

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**Accountable member:**

Cllr Rowena Hay, Leader of the Council

**Accountable officer:**

Claire Hughes, Corporate Director and Monitoring Officer

**Ward(s) affected:**

n/a

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**Key/Significant Decision:**

No

**Executive summary:**

This report sets out proposed revisions to the constitution.

**Recommendations:**

**That Council agrees to:**

1. give delegated authority to the Monitoring Officer to update the document to reflect the current accessibility, equity, equality, diversion and inclusivity requirements, including gender neutralization;
2. approve the provisions regarding substitutes as set out in part 6 of this report;
3. approve the revised debate flowchart to replace the existing version in Appendix G of the Constitution;
4. approve the amendments to Part 3 (Responsibility for Functions) as set out in part 8 of this report;
5. give delegated Authority to the Monitoring Officer to make further amendments to Part 3 to ensure that officers delegations reflect the current structure and sit at the appropriate level;

6. approve the amendments regarding webcasting and the retention of recordings as set out in part 9 of this report;
  7. the use of electronic signatures and seals as set out in part 10 of this report is approved
  8. give delegated authority to the Monitoring Officer to make the necessary changes to the Constitution to reflect these decisions.
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## 1. Implications

### 1.1. Financial implications

There are no direct financial implications arising from the recommendations.

**Signed off by:** Gemma Bell, Director of Finance and Assets, [gemma.bell@cheltenham.gov.uk](mailto:gemma.bell@cheltenham.gov.uk)

### 1.2. Legal implications

There are no specific legal implications arising from the recommendation of the report. Any decision to amend the Constitution rests with Full Council. The Constitution should be kept under review and amended where necessary to provide a clear governance framework that will support effective, efficient and lawful decision making in a manner that also supports accountability, scrutiny, and transparency.

**Signed off by:** One Legal - [legalservices@onelegal.org.uk](mailto:legalservices@onelegal.org.uk) Tel (01684) 272012

### 1.3. HR implications

There are no direct HR implications arising from this report.

### 1.4. Environmental and climate change implications

There are no direct environmental or climate change implications arising from this report.

**Signed off by:** Laura Tapping, Climate Change Programme Officer, [laura.tapping@cheltenham.gov.uk](mailto:laura.tapping@cheltenham.gov.uk)

### 1.5. Property/asset implications

There are no direct property or assets implications arising from the recommendations.

**Signed off by:** Gemma Bell, Director of Finance and Assets, [gemma.bell@cheltenham.gov.uk](mailto:gemma.bell@cheltenham.gov.uk)

### 1.6. Corporate policy framework implications

The recommendations, if approved, will support the good governance of the council which in turn will enable the council to be better able to deliver its corporate plan

**Signed off by:** Claire Hughes Corporate Director and Monitoring Officer

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## **2. Promoting equality and reducing discrimination**

There are no direct equality impacts arising from this report

## **3. Performance management – monitoring and review**

n/a

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## **4. Introduction**

- 4.1. The Constitution is a living document which requires regular review and maintenance. The most recent set of revisions, as set out in this report were considered by the Constitution Working Group on 9 February 2023, who approved all of the recommendations for consideration by Council.

## **5. Accessibility and Equality, Diversity and Inclusion**

- 5.1. Over recent years we have seen the public become more and more interested in local democracy and in understanding how decisions are made within local authorities. With this in mind there has been a drive towards creating documents which can be more easily understood by the public. It is therefore recommended that the current Constitution is updated to reflect a more user friendly language and layout and to incorporate the use of hyperlinks to relevant sections.
- 5.2. In addition, the current document does not fully reflect the existing accessibility standards, nor does it align with the authority's approach to equality, diversity and inclusion. Therefore whilst updating the document it is recommended that the Monitoring Officer seeks to gender neutralize it throughout and ensure that the revised version meets the current accessibility standards.

## **6. Appointment of Substitutes**

- 6.1. The existing provisions in relation to substitutes are set out in Part 4 of the Constitution. They provide that groups must appoint named substitutes and that the number of substitutes is limited to the number of seats on the respective Committee. This limits who can act as a substitute and has on occasions created some difficulties in representation.
- 6.2. Therefore the recommendation is that the Council move away from this process to a more flexible arrangement which simply provides that any member of a political group can substitute for another member of their group at any meeting (noting the relevant exceptions of Cabinet, Standards Committee and Licensing Sub-Committee) provided that they have completed any relevant training.
- 6.3. A tracked change version of the relevant section of the Constitution is attached at Appendix 1 for members consideration.

## **7. Council Debate Flowchart**

- 7.1. On 12 December Council agreed to reduce the speaking time in debate from 5 minutes to 3 minutes. The attached flowchart (Appendix 2) has been developed based on that change. The new flowchart provides a clear framework for motions and amendments and seeks to be

of assistance to the Mayor in Full Council. Council are asked to approve the adopted of the new flowchart which will replace the existing Appendix G of the Constitution.

## **8. Part 3 Responsibility for Functions**

**8.1.** Part 3 of the Constitution sets out all the relevant requirements and parameters around decision making and the responsibility for functions. A number of changes are proposed to this Part as follows:

### **8.2. Part 3C – Committee Functions**

8.2.1. There are a number of changes proposed to this section, including the addition of the number of committee members being added for all committees. There are also some changes required to the scheme more generally, particularly to reflect current practice in relation to planning and the updated national guidance on the determination of Licensing applications. Full details of the proposed changes can be seen as tracked changes in Appendix 3.

### **8.3. Part 3D – Officer Non-Executive Functions**

8.3.1. A number of minor amendments are required to this Part including the updating of references to Executive Board and reconciling of delegations to ensure consistency.

### **8.4. Part 3E – Executive Functions**

#### **8.4.1. *Sub-delegations***

- 8.4.1.1. This Part of the Constitution makes reference to the use of sub-delegations. However, the process is then contained in a separate annex. It is therefore recommended that the appendix be deleted and the text incorporated into the main body of the Part to facilitate a more coherent document.
- 8.4.1.2. A part of that change it is also recommended that the register of sub-delegations is held centrally by Democratic Services. At present the approach is inconsistent with some being held by Dem Services and some in individual services areas. This change will provide greater oversight for the Council as a whole.

#### **8.4.2. *Table 5 – Scheme of Delegation of Executive Functions***

- 8.4.2.1. Table 5 sets out the scheme of delegation of Executive Functions. It requires some minor changes as identified as tracked changes in Appendix 5. The most significant recommended change is around funding bids and the accepting of grants.
- 8.4.2.2. To date there has been some inconsistencies with the interpretation of the decision making process for the submission of funding bids. In addition, we are seeing higher value funding pots being made available and therefore it is considered appropriate to not only clarify the process but also update the financial thresholds. Whilst the proposals can be seen as tracked changes within the table for ease of reference they can be summarised as:

- Authority to submit a funding bid or accept grant funding which has resource implications, and where the amount of funding is less than £500,000 is a director decision
- Authority to submit a funding bid or accept grant funding which has resource implications, and where the amount of funding is more than £500,000 but less £2million is a Leader or Cabinet Member decision
- Authority to submit a funding bid or accept grant funding which has resource implications, and where the amount of funding is more than £2million is a cabinet decision

There is also a footnote which provides that where the bid or grant is over £2million and the deadline for the submission or acceptance makes it impossible for cabinet to make a decision within the required timescales, that the submission or acceptance can be signed off by the CEO or an Executive Director in consultation with the Leader or relevant Cabinet Member. As a matter of good practice other Group Leaders will also be informed of proposed decision and the final decision will be reported to the next meeting of the cabinet.

### **8.5. Part 3F – Statutory and Proper Officer Appointments**

- 8.5.1. The current details of the statutory and proper officer appointments sits within a separate appendix in the Constitution. In order to bring everything together in a more coherent format it is recommended that this be relocated to a new section, Part 3F. A copy is attached at Appendix 6.

## **9. Webcasting**

- 9.1. The current protocol for webcasting is contained within Appendix K of the Constitution. The content of it is now out of date and does not reflect the council's current practices and therefore requires some amendment.
- 9.2. At present the protocol provides that recordings of all meetings (with the exception of Cabinet and Council) are deleted from the system once the minutes have been published. It further provides that Cabinet and Council recordings are deleted after a period of 6 months. Whilst it is fully acknowledging that the minutes will always be the legal and official record of the meeting the Monitoring Officer is not of the opinion that deletion of the recordings is a necessity.
- 9.3. Most other local authorities retain recordings on their websites for much longer periods of time. It's therefore recommended that the council changes this current practice and agrees that recordings will be accessible for a period of up to 4 years, after which they will be removed. This change will not only improve the council's openness and transparency but should also reduce the number of FOI requests that are currently received for recordings.
- 9.4. A tracked changes version of the protocol is attached at Appendix 7

## **10. Electronic Signatures and Sealing**

- 10.1. In recent times there has been a mounting trend towards developing a paperless working environment by making more use of electronic means of communication and document retention. As a result the use of electronic signatures became more common.
- 10.2. The Electronic Communication Act 2000 and the Electronic Signature Regulations 2002 deal

with the admissibility and authenticity of electronic signatures.

- 10.3.** With the move towards more remote/hybrid working it is now necessary to accept and formally recognise the validity of electronic signatures on documents such as contracts, agreements, leases, deeds, minutes, resolutions and register of interest forms when used by both the Council and those with whom it enters into a contract or other legally binding deeds and documents.
- 10.4.** In addition remote working does cause some difficulties in affixing the Council's Common Seal to contracts and other documents. The Common Seal is currently held by One Legal in accordance with the Constitution. In the present circumstances it is necessary for physical attendance and signature to affix and witness the affixing of the Common Seal. It is proposed that where possible mobile sealing will be permissible provided that the software being used is secure, reputable and effective in allowing both the Council and other parties to easily sign documents with a strong audit trail to confirm who has performed the signature.
- 10.5.** In order to effect this change some amendments to the Constitution will be required. For example the addition of the following additional paragraphs:

Electronic signatures may be used by both the Council and the Supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Director of One Legal.

Electronic signatures will, in accordance with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter into a contract by and with the Council, insofar as the e-signature is a true representation of the authorised person's written signature and (a) and (b) below apply (to the supplier) in which case an e-signature and a signature will be referred to as the same.

- (a) the Contract will be entered into in relation to being either under seal or under hand; and
- (b) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.

- 10.6.** There will also be further additional minor amendments throughout the Constitution where reference is made to the seal or execution of documents.
- 10.7.** Members are asked to note that whilst authority is sought to amend the Constitution prior to implementation a guidance document will be provided to members and officers clearly setting out the detailed parameters on use and highlighting any documents where electronic signatures are still prohibited by law.

## **11. Reasons for recommendations**

- 11.1.** To ensure that the councils constitution remains up to date.

## **12. Alternative options considered**

- 12.1.** None but Council could decide not to approve the revisions

## **13. Consultation and feedback**

13.1. Constitution Working Group

**14. Key risks**

14.1. None

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**Report author:**

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**Appendices**

1. Provision for substitutes
2. Council motion flowchart
3. Part 3C of the Constitution – Committee Functions
4. Part 3D of the Constitution – Officer Non-Executive Functions
5. Part 3E of the Constitution – Executive Functions
6. Part 3F of the Constitution – Statutory and Proper Officers
7. Webcasting Protocol

**Background information:**

[Cheltenham Borough Council Constitution](#)