

Cheltenham Borough Council

Council – 21 February 2025

Revisions to the Constitution

Accountable member:

Cllr Rowena Hay, Leader of the Council

Accountable officer:

Claire Hughes, Director of Governance and Customer Services (Monitoring Officer)

Ward(s) affected:

n/a

Key/Significant Decision:

No

Executive summary:

This report sets out proposed revisions to the Constitution.

Recommendations: That Council:

- 1. Approves the revised contract rules as set out in Appendix 1.**
- 2. Approves the removal of decisions to award contracts made by the Cabinet or Cabinet Members from the call-in process, as per section 3 of this report.**
- 3. Approves the inclusion of an urgent question process for member and public questions as set out in section 4 of this report.**
- 4. Agrees that the responsibilities of the Audit, Compliance and Governance Committee and the Standards Committee are merged with effect from the next Annual Council meeting.**
- 5. Notes that from the next Annual Council meeting that the Audit, Compliance and Governance Committee will comprise of seven Elected Members plus two non-elected independent members.**

- 6. Gives delegated authority to the Monitoring Officer**
 - a. to make the necessary changes to the Constitution to reflect these decisions.**
 - b. In consultation with the Director: One Legal, to make any necessary changes to the Contract Rules, including any changes required to ensure compliance with guidance, policy, updated or secondary legislation**
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1. Implications

1.1 Financial, Property and Asset implications

There are no direct financial, property or asset implications arising from the recommendations.

Signed off by: Gemma Bell, Director of Finance and Assets,
gemma.bell@cheltenham.gov.uk

1.2 Legal implications

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.

Section 135 of the Local Government Act 1972 requires local authorities to have standing orders in respect of making of contracts for the supply of goods or materials for the execution of works. New legislation, the Procurement Act 2023, comes into force on 24 February 2025 in respect of all new procurements commenced on or after that date. As a result, the Council has to update its contract rules to ensure compliance with new legislation. Any procurements commenced, or contracts made under the current legislation, will still be governed by that legislation.

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

1.3 Environmental and climate change implications

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

Signed off by: Maizy McCann, Climate Officer, Maizy.mccann@cheltenham.gov.uk

1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities:

- Being a more modern, efficient and financially sustainable council

1.5 Equality, Diversity and Inclusion Implications

An equality impact assessment is not required for this report.

2. Contract rules

2.1 Before leaving the EU, public procurement legislation consisted of 4 sets of regulations:

- Public Contracts Regulations 2015
- Utilities Contracts Regulation 2016
- Defence and Security Public Contracts Regulations 2011
- Concessions Contracts 2016

2.2 The New Procurement Act 2023 (PA23) brings these 4 together under one regime providing an opportunity to redefine and simplify procurement processes. This is the biggest change to UK public procurement since 2015.

2.3 In October 2023, the PA 2023 received Royal Assent and is now a new law, which is due to take effect from 24th February 2025.

2.4 This means, the way the council procures goods & services is going to change, and to reflect these changes, the Contract Rules have been updated in line with the new act.

2.5 The Contract Rules have been reviewed and updated to reflect the provisions of the new Act (Appendix 1). The approach was to take out the detail and have the Contract Rules as the 'rules' - with a procurement toolkit providing the detail on 'how to' i.e. the process with guidance/ templates etc. The benefits of this approach are that (1) Contract Rules more accessible/ easier to read and (2) the toolkit can be updated easily as we develop our 'how to' – providing a one stop shop for procurement resources.

2.6 Key PA23 updates in the Contract Rules include, but are not limited to, the following areas:

SMEs Local suppliers Lotting Procurement procedures Pre- market engagement Transparency notices Regulated below threshold Conflicts of interest/ conflicts assessments	Conditions of participation Direct awards Debarment Central digital platform MAT (not MEAT) Social value Assessment summaries Contract management
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2.7 In addition the internal CBC thresholds have also been reviewed alongside the new Act. After considering the opportunities and risks of a change in approach it was conclude that for now, there would be no significant changes to the thresholds, with changes limited to increasing the £25k threshold to £30k and the £25-£50K threshold to £30k-£60k which essentially reflects the position that under the new Act VAT must now be included in contract values.

3. Call in of contract award designs

3.1 The constitution currently provides that contracts over £100k, even though not key decisions are subject to the provisions of call-in when the decision to award the contract is taken by cabinet or a cabinet member.

3.2 This process is causing delays in awarding delays in awarding contracts and, for above threshold contracts, delays in starting the 10-day standstill period as we cannot formally award the contract until call-in has passed.

3.3 The legal position is that only key decisions have to be subject to call in and therefore the council is able to take a decision to remove contracts from the call-in process in cases where they are not key decisions.

3.4 The Constitution Working Group considered a request from One Legal to support an amendment to the Constitution by amending the rules of call-in to remove contracts over £100k which are not key decisions from the call-in process. The request was unanimously agreed by the CWG and is now presented to Council for ratification.

4. Public Questions

- 4.1 The Constitution Working Group considered the current process for submitting public questions at its meeting on 23 January 2025, specifically whether the current deadline for submitting questions should be amended.
- 4.2 The current process as provided for within the constitution is that members of the public can ask questions at meetings of Cabinet, Committees and Full Council and that the deadline for submission of a question is midday on the **seventh working day** before the meeting. This means that public questions must be submitted ahead of the publication of the agenda which takes place at least five working days before the meeting.
- 4.3 The CWG reviewed the matter and considered a number of options, including whether to amend the deadline, to more actively promote the forward plan, publication of a draft agenda or the introduction of an urgent question process.
- 4.4 After considering all the options, the CWG were minded to leave the deadline as per the constitution. However, they are recommending that council agrees to introduce an urgent question provision whereby the Leader, relevant chair or Mayor would have the discretion to accept questions after the deadline, for example where a matter generated significant public interest. Where this discretion was exercised questions could be submitted up to 48 hours ahead of the meeting. For the avoidance of doubt this would not apply to regulatory committees.

5. Merger of Standards and Audit, Compliance and Governance

- 5.1 At its meeting on 23 January 2025 the constitution working group considered a proposal on merging of the functions of the Audit, Compliance and Governance Committee and the Standards Committee and appointing Independent Persons to Audit, Compliance and Governance Committee.
- 5.2 By way of background in accordance with the Localism Act 2011 local authorities have a statutory duty to promote and maintain high standards of conduct of their Members and co-opted Members. Under the Act there is no statutory requirement to have a Standards Committee however the Council chose to retain a Standards Committee. The Committee is supported by 2 Independent Persons.
- 5.3 The Audit, Compliance and Governance Committee has responsibilities that include overseeing the work of internal audit, being responsible for certain Council Rules and Codes, having oversight of the Whistleblowing Code and approving the Statement of Accounts, the Annual Governance Statement and

the Council's Letter of Representation in respect of the statement of Accounts. The Committee is not currently supported by any Independent Persons.

- 5.4 There has been a national trend towards merging the responsibilities of Audit Committees and Standards Committees and given the level of work undertaken by the Standards Committee (the committee not having met in full for around 2 years and only one sub-committee being convened for a code of conduct hearing) this would seem like an appropriate option for consideration by CBC as the impact in terms of workload for the Audit, Compliance and Governance Committee would be minimal.
- 5.5 The merger would provide a more streamlined governance structure by allowing one committee to have focussed oversight of governance matters and fits well within the existing title of the committee which already includes compliance and governance. It would also provide some independent assurance to the committee through the addition of Independent Persons, who would be reappointed via an open recruitment process.
- 5.6 If agreed, the terms of reference of the existing Standards Committee and the Audit, Compliance and Governance Committee will be combined to form the new terms of reference but in practice it would mean that general standards or code of conduct matters, such as updating the code of conduct would be considered by the audit, compliance and governance committee and that any hearings would take place via a sub-committee which would be drawn from the main committee.
- 5.7 The existing chairs of the Standards and Audit, Compliance and Governance Committees have been consulted on these proposals and are supportive of the proposed way forward.

6. Reasons for recommendations

- 6.1 To ensure that the council's Constitution remains up to date.

7. Alternative options considered

- 7.1 None - but Council could decide not to approve the revisions

8. Consultation and feedback

- 8.1 Constitution Working Group

9. Key risks

- 9.1 None

Report author:

Claire Hughes, Director of Governance and Customer Services (Monitoring Officer)
claire.hughes@cheltenham.gov.uk

Appendices

1. Revised Contract Rules

Background information:

[Cheltenham Borough Council Constitution](#)