

WELWYN HATFIELD BOROUGH COUNCIL
REPORT OF THE MONITORING OFFICER
SPECIAL COUNCIL- 6 MAY 2020

REVIEW OF THE COUNCIL'S CONSTITUTION

1 Executive Summary

- 1.1 The purpose of this report is to seek approval to changes to the Constitution as part of the ongoing review and modernisation of the Council's governance processes following consideration by the Constitution Review Group (CRG) and in accordance with one of the key recommendations in the corporate peer challenge action plan (as agreed at the Council meeting on 22 July 2019). The revision of the Constitution is an important part of the modernisation programme.

2 Recommendations

- 2.1 That Council notes CRG's recommendations of the 5th March 2020 as set out in Appendix 1 to this report.
- 2.2 That Council approves the revised Access to Information Procedure Rules, Cabinet Functions, Cabinet Procedure Rules, Councillors' Code of Conduct with new Social Media Protocol and amendment to Contract Procedure Rules, together with the introduction of Executive Member Decision Notices, as set out in Appendices 2 to 7 to this report.
- 2.3 That Council accepts CRG's recommendations to approve the proposed Officer amendments to their individual responsibility for functions and delegated powers, as set out in Appendix 8 to this report.
- 2.4 That Council accepts CRG's recommendations to agree to trial new scrutiny arrangements for a period of one year until the start of the new 2021/22 Municipal Year, as explained in paragraphs 3.9 to 3.19 of this report.
- 2.5 That Council delegates to CRG the authority to agree the operational arrangements for the new Overview and Scrutiny Committee.
- 2.6 That Council approves the appointments to the new Overview and Scrutiny Committee and any consequential updated appointments to other committees as set out in Appendix 11 to this report.
- 2.7 That Council approves the amended timetable for the dates of the council meetings in the Municipal Year 2020/21 as attached at Appendix 12, to reflect the changes to the scrutiny arrangements for the council.
- 2.8 That Council agrees to adopt the standing orders for virtual meetings, the requirements as explained in paragraphs 3.20 and 3.21 of this report and as set out in Appendix 13 to this report.

- 2.9 That the Chief Executive is authorised to take all necessary decisions of the council in the event of urgency or emergency.
- 2.10 That Council approves, in relation to each and every member of the council, that non-attendance by a member at any relevant meeting of the Council, Cabinet or any committee, sub-committee or panel of the Council or Cabinet that is due to or caused by any related impact or consequences arising out of the coronavirus pandemic, be accepted as a reason for non-attendance at that relevant meeting, from the date of this resolution up to and including the 7th May 2021.
- 2.11 That Council agrees to give delegated authority to the Monitoring Officer, in consultation with CRG Members, the Chief Executive and the Corporate Director (Public Protection, Planning and Governance), to make any required consequential amendments to the Constitution and implement the detailed changes to procedures arising from approving these recommendations together with any general updating.

3 Explanation

- 3.1 The cross-party Constitutional Review Group (CRG) was appointed at last year's Annual Council meeting to review the Constitution and make recommendations for change to update and streamline the Council's governance arrangements to reflect the Council's modernisation programme. In any event, the review of the Constitution is a continuing and ongoing responsibility.
- 3.2 The Council has already agreed some changes to facilitate the modernisation programme.
- 3.3 The first proposed changes were submitted to the Special Council meeting on 25 February 2019 and following discussion these were deferred for further consideration by CRG (Minute 63 refers).
- 3.4 Some of these proposed changes then went forward to the next Council meeting on 25 March 2019 and revised Council Procedure Rules and Rules of General Application to all Committees were approved (Minute 72 refers). As part of this, the on-line access to the Constitution was improved to allow direct access to specific chapters.
- 3.5 At the Council meeting on 26 September 2019 a change to the Constitution was made to enable the timetable of meetings to be approved at an ordinary Council meeting rather than at the Annual Council meeting. This allowed the timetable to be agreed much earlier and well in advance of the new Municipal Year (Minute 29 refers) to give earlier notification of Committee meeting dates.
- 3.6 Since then CRG met on six further occasions and proposed changes to Access to Information Procedure Rules, Cabinet Functions and Cabinet Procedure Rules and the Code of Conduct and the introduction of Executive Member Decision Notices that are now submitted to this meeting for approval.
- 3.7 This draft documentation was circulated to all Members of the Council on 24 December 2019 and again on 10 February 2020 to give an opportunity for comments to be made and queries to be raised in advance of this meeting. No comments or queries have been received at the time of writing this report.

- 3.8 The Standards Committee on 10 February 2020 reviewed the revised Code of Conduct which had been aligned with the Council's #One Team behaviours and values and a new Social Media Protocol for Members which had been prepared by an external consultant and recommended these to the Council for adoption.
- 3.9 **Proposed new scrutiny arrangements** - CRG met on 5 March 2020 to consider draft proposals for the revision of scrutiny based on the feedback from the Member workshops on 20 February 2020 led by the Centre for Public Scrutiny (Minutes of the meeting attached at Appendix 1). The CRG proposals were due to be considered by Council on the 23 March 2020 before this meeting had to be cancelled due to the coronavirus pandemic.
- 3.10 These proposals suggested a possible reduction in the number of Overview and Scrutiny Committees (OSC) from the current three, Environment, Social and Resources from the new Municipal Year on a trial basis to either one or two new Committees. Two options were discussed:
- Option 1 Establish a single OSC with (two or three) standing Task and Finish Panels (T&FP) to be mobilised as requested by the parent OSC. No more than two T&FPs should be active at any one time and their scrutinies should be time limited and conducted within a set period of, for example, two months with a target for a total number of in-depth scrutinies per year, for example, two or three. Panel Chairmen to be appointed at the start of the year.
 - Option 2 Establish two OSCs, one specifically for Policy Review and Call-In. The general OSC could also have (for example, two) standing T&FPs as detailed in the first option.
- These are models currently used in other authorities. Option 1 was preferred by CRG on the basis that it would provide more effective scrutiny and overview with tighter criteria, a higher-level strategic focus and streamline the Committee structure freeing up Member and Officer time to modernise the Council's decision-making processes. A chart showing the current and proposed scrutiny structures is attached at Appendix 8. It is not proposed that the call-in arrangements by the OSC will change and members will still have the right to call-in any Cabinet decisions within the current timescales.
- 3.11 As there is now no requirement to hold an annual council meeting, it is recommended that these arrangements are put into place once approved by Council. This report recommends that CRG is delegated with the authority to agree the final operational agreements for the OSC.
- 3.12 The arrangements will be trialled until the new 2021/22 Municipal Year. The new Committee will have 13 Members politically proportionate with the Chairman (Administration Member) and Vice-Chairman (Opposition Member) appointed and the proposed appointments are set out in Appendix 9 to this report. The meeting cycle of the OSC will reflect the current cycle of 5 meetings in the municipal year, with the ability to mobilise time limited T&FPs, as required.
- 3.13 T&FPs would be set up by the OSC as and when required rather than as be established as standing bodies with a minimum of 5 Members, politically proportionate, with an Opposition Chairman. Membership of T&FPs can include any non-executive member of the council.
- 3.14 The current call-in procedure will not change.

Cabinet decisions are published within three working days of a meeting and those that involve expenditure over £100,000 can be called-in by at least a quarter of OSC Members within four working days. Either a special OSC meeting will be convened within three working days of the call-in request to consider the item, or it will be placed on the Agenda of the next available meeting, depending on which is the earlier.

As part of the operational arrangements, CRG will consider how best to build effective scrutiny much earlier into the executive decision-making process.

One option may be to consider the possible involvement of the new Scrutiny Chairman at Group Leaders' meetings or having regular meetings with Cabinet Members to discuss key proposals such as policy development, business planning and budget setting.

This would assist and enable the OSC to determine key items for scrutiny in setting its work programme and for the executive to be held to account more effectively.

- 3.15 There would be no limit on the number of T&FPs set up during the Municipal Year, however these would be time-limited to two months in their scrutiny timetable with only two or three T&FPs ongoing at any one time. The parent OSC would consider topics both for scrutiny and policy review mobilising T&FPs as necessary.
- 3.16 Information currently contained in reports "for noting" would not go to the new Committee to free up more time and focus for strategic OSC meetings. However, it was considered important by CRG that Members retained oversight of operational activities and it was suggested that such information could be made available to them in a different way. In the longer term this could be through an "information hub", the mechanisms of which could be worked out by Officers in consultation with CRG. In the meantime, the functionality of Mod.gov could be improved so that information was accessible to Members and could be used in the first instance, as well as email updates and the Members Bulletin.
- 3.17 Reporting on performance would need to be revised under the new structures, so that OSC could operate at a strategic level.

Currently key performance indicators (KPIs) go to OSCs for consideration in accordance with each OSC's terms of reference. CRG Members observed that there was little rationale to this, as some KPIs could be of interest to all Members and were cross-cutting. With all KPIs allocated to a single OSC, this would avoid the risk of duplication. It was suggested that one option was that a refined list of KPIs could be considered in a different way by the new OSC. Options will be put forward to CRG to agree as part of the operational arrangements for the new OSC.

In the meantime, all agreed KPIs in the core suite would continue to go to the quarterly Performance Clinics and those not meeting their targets would by exception be reported to Cabinet. Members would have the opportunity to check Committee packs and Call-In any decisions if necessary.

All other KPIs could go into the information area for Members to note, until a piece of work on refining them had been carried out. It is proposed that a report from the Head of Policy and Culture as to options could be brought to the next meeting of CRG for consideration. This will include options on how Members could also consider how service papers and key partners' performance indicators, currently being sent to OSCs for oversight, could be reported.

- 3.18 Once the operational arrangements have been agreed for the new OSC, these changes would be trialled for one year with a report being brought back to Council via CRG in early 2021. The detailed changes to these procedures would be implemented by Officers working with Members.
- 3.19 CRG will continue to review the remainder of the Constitution including Development Management Committee and Parish/Town Councils, Key Performance Indicators, Outward Facing Functions – Public Engagement, Contract Procedure Rules, Financial Procedure Rules and Budget and Policy Framework Procedure Rules, together with options for a new format. CRG will carry on with this detailed work in the new Municipal Year.
- 3.20 **Proposed standing orders for virtual meetings-** The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authorities and Police and Crime Panel Meetings (England and Wales) Regulations 2020 ("the Regulations") came into force on 4th April 2020 to enable councils to conduct necessary business by way of remote committee meetings during this current public health emergency. The effect of the Regulations is to insert effectively mandatory standing orders for those authorities that wish to hold meetings remotely.
- 3.21 These standing orders exist only on a temporary basis, having effect between 4th April 2020 and 7th May 2021. Whilst these standing orders have an automatic effect, it is considered good practice to adopt these (and any other standing orders required to facilitate the technologies employed by each authority) formally and at the earliest opportunity. Proposed standing orders for this council to facilitate remote committee meetings are set out in Appendix 13 to this report.

Implications

4 Legal Implication(s)

- 4.1 Section 9P of the Local Government Act 2000 (as amended) requires a local authority to prepare and keep up to date a Constitution.
- 4.2 There is also Government Guidance ' DETR New Council Constitutions Local Government Act 2000 Guidance to English Local Authorities'
- 4.3 A Constitution Direction was issued by the Secretary of State, 'DETR Local Government Act 2000 (Constitutions) (England) Direction 2000', requiring around 80 matters to be included within council Constitutions. These are prescribed matters that must be included in a local authority's Constitution.
- 4.4 These documents should be read in the context of superceding legislation including the Local Government and Public Involvement in Health Act 2007 and Localism Act 2011.

- 4.5 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authorities and Police and Crime Panel Meetings (England and Wales) Regulations 2020 ("the Regulations") came into force on 4th April 2020 under section 78 of the Coronavirus Act 2020 to enable councils to conduct necessary business by way of remote committee meetings during this current public health emergency. The effect of the Regulations is to insert effectively mandatory standing orders for those authorities that wish to hold meetings remotely. The Regulations are effective between 4th April 2020 and 7th May 2021.
- 4.6 Chief Executive's urgency powers- the coronavirus pandemic has highlighted the need for the Chief Executive to have delegated power to exercise all and any necessary decisions of the council in the event of urgency or emergency, where the Leader of the Council is unable to do so. This is a provision in most other councils' constitutions but is currently not provided for in this council. It is recommended that this urgency power is expressly included in this council's constitution.
- 4.7 Section 85 of the Local Government Act 1972 provides that if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he shall, unless the failure was due to some absence approved by the authority before the expiry of that period, cease to be a member of that authority.

5 Financial Implication(s)

- 5.1 Members' Allowances Scheme- Special Responsibility Allowances (SRAs) for OSC Chairmen have already been set by Council. This will continue to apply to the new OSC. Council has already resolved for an overall wider review to be carried out on Members' Allowances later on in the year.
- 5.2 The engagement of the Centre for Public Scrutiny (CfPS) in this process has cost £4950 in total which includes writing new rules of procedure for scrutiny.
- 5.3 No other direct financial implications although there has and continues to be a substantial call on Officer(s) time to service the CRG, draft, re-draft and produce any major re-writes to the procedures within the Constitution.

6 Risk Management Implications

- 6.1 The risks related to this proposal are:
- 6.1.1 Risk: Reputational - proposed changes may not meet everyone's requirements resulting in possible adverse publicity
Assessment: Medium
Mitigating Actions: Consider if consultation at appropriate stages may assist.
- 6.1.2 Risk: Reputational - Council fails to take the opportunity to modernise the Constitution.
Assessment: Medium
Mitigating Actions: Officers to continue work to with CRG and Group Leaders to help devise and adopt a modern Constitution.

7 Security and Terrorism Implication(s)

- 7.1 Members are obliged to consider security and terrorism implications when making decisions and any proposed changes to committee structures and reporting processes need to ensure such considerations can continue to be made.

8 Procurement Implication(s)

- 8.1 The Centre for Public Scrutiny was engaged in the review of scrutiny. There are no other direct procurement implications arising from the content of this report.

9 Climate Change Implication(s)

- 9.1 A streamlined scrutiny process which succeeds in reducing the number of meetings, number of agenda items and amount of pages in reports will lead to a reduction in the carbon footprint of these meetings through less paper, ink and fuel use for those having to attend.

10 Human Resources Implication(s)

- 10.1 There is a substantial call on Officer(s) time to service committees and panels including time to draft and produce any major re-writes to the procedures within the Constitution. Ultimately, a reduction in the number of OSCs should overall reduce the officer time necessary in reporting and servicing the committees.

11 Health and Wellbeing Implication(s)

- 11.1 There are no specific identified health and wellbeing implications directly arising from the content of this report.

12 Communication and Engagement Implication(s)

- 12.1 Overview and Scrutiny Committees are one of the prime public faces of the council; improving the procedure and making it more accessible to the public will strengthen the effectiveness, impact and profile of the scrutiny process.

13 Link to Corporate Priorities

- 13.1 A modernised and updated Constitution will support the Council's corporate priorities corporate and the peer challenge action plan.

14 Equality and Diversity

- 14.1 I confirm that an Equality Impact Assessment (EIA) has not been carried out in connection with the proposals that are set out in this report as it is not currently required.
- 14.2 However, an EIA may be required when a certain part of the Constitution is reviewed e.g. 'a description of the rights and responsibilities of inhabitants of the authority's area' or 'a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to meetings of the authority' and the need for an EIA will be considered at the relevant time.

Name of author Alison Marston 01707 357413
Title Governance Services Manager
Date 21 April 2020

Appendix 1 - CRG Minutes of 5 March

Appendix 2 - Cabinet Functions

Appendix 3 – Cabinet Procedure Rules

Appendix 4 – Code of Conduct and Social Media Protocol

Appendix 5 – Executive Member Decision Notices

Appendix 6 – Extract from Contract Procedure Rules

Appendix 7 – Access to Information Procedure Rules

Appendix 8 – Officer Responsibility for Functions

Appendix 9 – Note Explaining Summary of Constitutional Changes

Appendix 10 – Chart Showing Current and Proposed Scrutiny Structures

Appendix 11 - Appointments to the Overview and Scrutiny Committee

Appendix 12 - Amended timetable of council meetings for Municipal Year 2020/21

Appendix 13 - Standing Orders for Virtual Meetings