

Part I

Main author: Saleem Chughtai

Executive Member: Cllr Paul Zukowskyj

Ward: All Wards

WELWYN HATFIELD BOROUGH COUNCIL
COUNCIL – 19 JULY 2023
REPORT OF THE MONITORING OFFICER

REVIEW OF THE CONSTITUTION

1 Executive Summary

- 1.1 The purpose of this report is to consider changes to the Constitution as attached with tracked changes and to recommend adoption of a revised Constitution.
- 1.2 The constitution review group met on 10 July 2023, during which a number of proposed changes were debated in detail. The changes tracked in Appendix A were unanimously agreed by the group.

2 Recommendation

- 2.1 That the revised Constitution be approved and adopted by Full Council.

3 Explanation

- 3.1 The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.
- 3.2 The Constitution is divided into 16 articles which set out the basic rules governing the authority's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document. The Constitution is therefore at the heart of the authority's business transactions and operations. It is intended to be a coherent single document which can be used as a comprehensive point of reference by individuals and organisations inside and outside of the authority, and as a result is not and cannot be a brief document.
- 3.3 Constitutions that are succinct and focus on the core framework are often much more effective and assessable, as well as being more likely to be understood by Members, Officers, and the public, than those that are lengthy and include significant amounts of information that arguably does not need to be in the Constitution, but can instead be made accessible elsewhere. In this review a structured approach has been taken to hyperlinks to documents (including photographs) published or used by the Council which can be revised separately from the rest of the Constitution, and whose use shortens the Constitution.
- 3.4 Currently, there are 14 pages left blank intentionally in the Constitution. In this review a renumbering has taken place to remove these blank pages. The drafting of the Financial Regulations and the contract Procedure Rules have a different

format to the rest of the Constitution and these anomalies have been reformatted in this revision.

- 3.5 A number of changes have been made to achieve consistency. In this revision, the Council as a Local authority has been consistently referred to as “the Council” and the Council as a committee consistently referred to as “Full Council”.
- 3.6 The deadline for questions from the public to full council, has been amended from 5 clear working days, to 4 working days. This means the deadline will always be after the publication of Council reports in future, enabling great public participation in local democracy.
- 3.7 References to legislation have been updated, along with a review of Officer and Executive Member responsibilities and delegations, to ensure these are aligned to the Management structure and Cabinet.
- 3.8 Provision has been made for e-signing and e-sealing, in order to enable the council to make use of technology to streamline processes.
- 3.9 Following the Council joining the shared-fraud service, updates have been made to reflect this arrangement and oversight of this function.
- 3.10 Minor updates have been made to the financial regulations and contract procedure rules, to reflect the last tax requirements, emergency provisions and a review of delegations, to match latest working practices.
- 3.11 The Overview and Scrutiny Protocol has been updated to reflect the working practices, including officers drafting reports for the chairs of task and finish panels, and clarifying the make up of the task and finish panels based on working practices and previous agreement with the Committee.
- 3.12 Member allowances have been updated to include the latest allowances, and an updated Notice of Registerable Interests form has been included.
- 3.13 Some minor updates have been made in Resident and Neighbourhood Teams to ensure these reflect current working practices and services provided.
- 3.14 A responsible person and accountable person have been included for the purposes of Health and Safety, in particular as part of the Building Safety Act 2022.
- 3.15 Updates have been made to planning procedures, to ensure that the Development Management Committee consider key applications, and that the democratic process is maintained.
- 3.16 The Constitution Review Group considered proposed changes at a meeting on 10 July 2023. Following discussion and debate some minor changes were made to the proposals, and the changes presented to Full Council are those which were agreed unanimously by the Committee for recommendation,
- 3.17 There is draft legislation in Parliament which will require changes to future iterations of the Constitution, particularly the Levelling Up and Regeneration Bill and the Procurement Bill. Clause 158 tabled in the House of Lords to the

Levelling Up and Regeneration Bill by Baroness McIntosh of Pickering (Conservative), with cross party support, would enable local authorities to meet virtually. The Procurement Bill will repeal The Public Contracts Regulations 2015 (subject to transitional provisions for ongoing procurements and contracts) and new rules on procurement will be set out in the new regime. The Bill is expected to have the Royal Assent before the Summer Recess. The Government plan a 6 months' period to allow for changes to procurement to be considered and during those 6 months secondary legislation will be brought forward and come into law in 2024.

- 3.18 Given these pending changes, the changes proposed in this Review are mainly restricted to catch up and formatting. On a further review, the opportunity should be taken to include an introduction to the authority after the Summary, remove statutory references to the start of the main articles to a separate legal check list and to include an index.

Implications

4 Legal Implication(s)

- 4.1 Under Section 9P of the Local Government Act 2000 (LGA 2000) the Council is under a duty to prepare a Constitution and keep it up to date. The Section states that the Constitution must contain:
- The standing orders/procedure rules;
 - The Members' Code of Conduct;
 - Such information as the Secretary of State may direct;
 - Such other information (if any) as the Council considers appropriate.
- 4.2 In December 2000 the Secretary of State issued a Constitution Direction that required around 80 matters to be included within Constitutions, covering amongst other details of procedures for meetings, details of joint arrangements with other local authorities. A Model constitution was also issued in 2000 (Modular Constitutions for English Local authorities) which most Councils, including Welwyn Hatfield, adopted and which continues to form the basis of our Constitution.
- 4.3 Section 9P of the LGA 2000 also provides that a local authority must ensure that copies of its Constitution are available at its principal office for inspection by members of the public at all reasonable hours and must supply a copy of its Constitution to any person who request a copy and who pays to the authority such reasonable fee as the authority may determine. A copy is available free of charge via the Council's website.
- 4.4 The Constitution Direction requires that the Constitution contains:
- a description of the register of interests of members and co-opted members of the authority required under Section 81 of the Act, together with the procedures for publicising, maintain and updating that register; and a register stating:
 - the name and address of every member of the local authority executive for the time being and the ward or division (if any) which he represents; and

- the name of every member of each committee of the local authority's executive for the time being.

These are contained in the Constitution with photographs of the Cabinet Members but can be contained more conveniently by hyperlinks to the web pages of Committees and Members' interests which can be updated more easily during the year.

5 Financial Implications(s)

- 5.1 The proposed changes to the constitution will ensure the constitution reflects current legal requirements, best practice and working practices in relation to financial matters.
- 5.2 Emergency provisions have been reviewed to ensure that there is an ability for the Emergency Response Team to access cash, in the event there is a need following the Council's emergency plan being activated.
- 5.3 Delegated levels have been reviewed for legal matters, bringing in new levels of authority, such as Executive Member approval for certain value settlements. This brings the approach in line with other financial and procurement matters, where there area hierarchies of approval based on value.

6 Risk Management Implications

- 6.1 There are no direct risk management implications arising from this report. It does however ensure that responsibilities for Risk, Business Continuity and Health and Safety are properly aligned to the new management structure and Cabinet, and that appropriate oversight is in place for these.

7 Security and Terrorism Implication(s)

- 7.1 There are no direct security and terrorism implications arising from this report.

8 Procurement Implication(s)

- 8.1 Some minor amendments have been made to the contract procedure rules, including a review of the off payroll working requirements (taxation regulations) and adding clarity to procurement decisions required for direct awards from approved procurement frameworks.

9 Climate Change Implication(s)

- 9.1 There are no direct climate change implications arising from this report.

10 Human Resources Implication(s)

- 10.1 There are some minor changes to Human Resource matters, to reflect current working practices and employment policies and procedures.

11 Communication and Engagement Implication(s)

- 11.1 There are no direct communications implications arising from this report.

12 Link to Corporate Priorities

- 12.1 The subject of this report is linked to the Council's Corporate Priority of being a well run council which puts its customers first. The report also links to the successful running of the council, and all its services, which will assist in the delivery of all corporate priorities.

13 Equality and Diversity

- 13.1 An Equalities Impact Assessment was not completed as the changes do not impact on policy or service provision.

Saleem Chughtai
Assistant Director Legal and Governance
28th June 2023