

REVIEW OF THE CONSTITUTION

JOINT MEMBER / OFFICER WORKING GROUP

Terms of Reference

1. PURPOSE

This working group has been established to review the following work package on behalf of the Constitution Sub Committee:

- Work Package 1 – The overall style and presentation of the Constitution

2. SCOPE, ROLE & APPROACH

The scope of each Work Package is set out in *Appendix A* (as agreed by Constitution Sub Committee, 23rd August 2017).

This includes the current structure of the Constitution (*Appendix A1*) and the proposed structure of the revised Constitution (*Appendix A2*). To assist the Working Group, please see the Statutory Compliance Checklist prepared which clarifies precisely what **MUST** be contained in the revised Constitution (*Appendix A3*) and a mapping of the current Constitution has to the Work Package structure (*Appendix A4*).

In addition, the Council's Vision and defining principles are set out in *Appendix B* (as agreed by Constitution Committee, 4th August 2017). The review's default position, therefore, is that anything not explicitly contained within *Appendix A3* is **NOT** included in the revised Constitution unless a clear and persuasive argument for inclusion is made by the Working Group and agreed by the Sub Committee. Wherever possible, signposting from the Constitution to relevant additional material (facilitated by electronic links in a digital version) is the preferred solution.

The Working Group will:

- Consider the section of the Constitution which relates to the Work Package in light of the Vision and defining principles.
- Consider all comments previously received in relation to that section of the Constitution.
- Report to Bevan Brittan on suggested amendments in the agreed format (see *Appendix D*)
- Review and approve suggested redrafts of that section for submission to the Constitution Sub Committee.

3. INTERDEPENDENCIES

Each Working Group will limit itself to the scope of its own Work Package only. However, each should also be mindful of the overarching principles of this review, and recognise that it may need to adjust its outputs based on the outputs from other Groups. The Lead Officer will check the Project Sharepoint site on a regular basis (and before any meetings) for any relevant output from the other Working Groups.

Any potential inconsistencies of approach between Groups will be highlighted by the Sub Committee, Bevan Brittan and/or the Project Board as appropriate and the relevant Lead Officer(s) informed.

4. MEETINGS

Meetings will be held as and when required to fit in with the agreed timetable of the Constitution Sub Committee. It may be that meetings are limited to the Lead Officer and Lead Member reviewing electronic submissions from other members of the Working Group.

Any meeting dates and venues will be set in advance and publicised to all Members and notified to Officers through the Project Sharepoint site.

5. MEMBERSHIP

The following people will form part of the working group:

Name	Role
Cllr. Andrew Martin	Lead Member/Chairman
Dan Dickinson	Lead Officer

These working group members will be proposed by the Lead Member and Lead Officer based upon their expertise and availability, and may deal with specific elements of the Work Package or its entirety.

Note: Any Council Member may attend and, with the consent of the Chairman, contribute to any Working Group.

6. REPORTING

The Lead Officer will be responsible for co-ordinating reporting to Bevan Brittan and back to the Sub-Committee in accordance with the published timetable through the project infrastructure (using the Project Sharepoint site).

Reporting will be in the following format:

- Verbal update
- Current Working Group Action Plan (see *Appendix C* for template)
- Suggested amendments for re-drafting in the approved format set out at *Appendix D* (to be prepared by Bevan Brittan).

WORK PACKAGES

Work Package 1 - The overall style and presentation of the Constitution

- 4.1.1 Work Package 1 relates to the overall style and presentation of the constitution.
- 4.1.2 Appendix A1 shows the table of contents for the current constitution showing how its content is currently arranged. Appendix A2 sets out a proposed table of contents reflecting a proposed new arrangement of its content.
- 4.1.3 The approach in Appendix A2 follows that agreed by Constitution Committee (04.08.17), to keep the constitution focused, clear and future-proofed as far as possible. It will contain only what it is required to contain. It is set out in logical sections mirroring the main decision making “components” of the Council.
- 4.1.4 Appendix A2 currently shows rules of debate at meetings, access to documents and information, and employment rules as separate procedure rules in a distinct section. However, in keeping with the ethos of “everything that relates in one place”, the Constitution Sub Committee has approved the alternative options below:
- In respect of the employment rules, these relate to the employment of certain specified officers. Those rules are applied by the Staffing Committee, the Investigation and Disciplinary Committee, the Disciplinary Appeals Committee, and the Independent Persons Panel. All of the materials that relate to those committees (terms of reference, composition etc.) would be found in the “Committees” section of the constitution. It would be in keeping with the “everything in one place” approach to have the employment procedure rules in the same place as the provisions that constitute and govern the operation of the committees that apply those rules.
 - Similarly, the rules in relation to debate at meetings (often referred to as Council or Committee Procedure Rules) are better placed along side the sections of the constitution that relate to the workings of the council and the workings of committees, so that someone wanting to understand the council or its committees could find everything they need to know (what the committee is, what it does and how it does it) in a single place.
 - Finally, Members take the view that the rules about accessing documents and information are better placed in the section of the constitution which deals with the rights members of the public have. After all, those rules are primarily intended to ensure that the public have access to the materials they are entitled to access in order to facilitate and enable better engagement with the democratic process. Thus, Members take the view that setting out those rules in that section better accords with the “everything that relates in one place” approach.
- 4.1.5 In terms of style and presentation, it is proposed to observe plain English principles when drafting and to adopt a clear, modern approach to layout including utilising hyperlinking where possible. Early re-drafts of sections where substantive changes to content are not required will be brought to the Sub-Committee to model and seek approval to the proposed approach.

Work Package 2 - Decision Making – Terms of Reference of Member Bodies

- 4.1.6 A review and refresh of the provisions of the constitution relating to Member decision making. Principally, this will cover the terms of reference for the work of the Cabinet and Committees.
- 4.1.7 The work group will seek input from appropriate Officers and Members with responsibility and experience of operating the relevant functions. For example, committee chairs and vice chairs and the officer leads in each area. The review shall encompass and reflect on any changes suggested to deliver the agreed vision and seven guiding principles.
- 4.1.8 As part of this work package, the work group will specifically consider the governance arrangements for the council's Shared Services Committee, Local Area Partnerships and its ASDVs.

Work Package 3 - Decision Making – Officer Scheme of Delegation

- 4.1.9 A review and refresh of officer delegations. This is the area of the constitution which, in Bevan Brittan's view, requires most focus and detailed work.
- 4.1.10 Bevan Brittan has suggested that a revised officer scheme of delegation could be set out as follows:-
 - Introduction – purpose of scheme and overall explanation of its structure and how it works
 - General principles of delegated decision making including consultation, taking required advice, record keeping, ability to delegate on to other officers (through chains of sub-delegation)
 - Functions delegated to the Chief Executive as the statutory "Head of Paid Service" (HoPS) and all Chief Officers and the Proper Officer who would then determine whether and how functions should be sub- delegated
 - Live links through to the local schemes of delegation recording sub-delegations which would be produced and maintained in each directorate.
- 4.1.11 Underpinning this approach will be:-
 - Clarity on which type of decisions require prior consultation with members and other stakeholders and which do not
 - An agreed template for local schemes of delegation which each directorate would create and keep updated. These would be lodged centrally and accessible through live links from the constitution
 - Avoiding duplication of other parts of the constitution e.g. officer code of conduct, financial regulations etc. If necessary a link will cross refer readers to the relevant other part.
- 4.1.12 This approach lends itself to setting the delegations out by reference to the three directorate groupings of People, Corporate and Place, to refer to the area of activity or service covered in the delegation and to avoid (except where necessary in law) references to specific legislative provisions to make the document more future-proof.
- 4.1.13 In addition to future-proofing the constitution, the approach suggested allows the council to be more fleet of foot in how it configures itself to respond to changes in legislation and opportunities to improve service delivery and drive business efficiencies.
- 4.1.14 This area of the constitution has attracted significant comment. The work group for this work package draws in officers from key service areas as and when needed, and builds on the body of detailed review work which has already been undertaken.

- 4.1.15 Because a considerable number of officer decisions are taken under specific delegations from Cabinet and Portfolio Holders there will be a joint meeting of the working groups covering work packages 2 and 3 to work through decisions flow charts and to ensure the necessary linkages are made to deliver an “end to end” approach to decision making that requires involvement from both Member and Officer decision takers.
- 4.1.16 At that meeting both work group will work through a number of typical decision and transaction types so that these can be captured as flow charts and used as an efficiency check as the new constitution emerges. This will ensure that any proposed new approach is assisting (and not hindering) the clarity and robustness of decision making. The agreed final flow charts will not be part of the constitution but will be a practical tool for officers and members to use.

Work Package 4 - Procedure Rules

- 4.1.17 A review of the Procedure Rules (Council, Cabinet, Committee, Budget and Policy Framework and Scrutiny), Access to Information Rules, Finance Procedure Rules, Contract Procedure Rules and the Staff Employment Rules. The work group for this work package draws in officers from key service areas as and when needed, and builds on the body of detailed review work which has already been undertaken.

Work Package 5 - Codes/Protocols and Members' Allowances

- 4.1.18 This will involve a similar approach to work package 4. It may be that some of these items can be refined, reduced, removed, combined with or moved to other sections of the constitution. The codes and protocols which need to be reviewed are:-
- Member Code of Conduct
 - Officer Code of Conduct
 - Member/Officer Relations Protocol
 - Whistleblowing Policy
 - Planning Protocol
 - Public Speaking Protocol
 - Local Ward Member Protocol
 - Call for Action protocol
 - Mayoralty Code of Practice
- 4.1.19 Members' Allowances may be put into a new standardised house style but substantive changes are subject to a separate process and therefore outside the scope of this Work Package.

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PROPOSED STRUCTURE AND CONTENT OF THE CONSTITUTION

Part	Title	Contents
1	Introduction, summary and explanation	<p>Sets out an overall view of how the Council operates, what rights members of the public have and what the key parts of the Constitution cover.</p> <p>Links through from this part direct to all other parts referenced</p>
2	Responsibility for Functions	<p>Sets out the way in which functions have been allocated and which decision-making body/person within the Council has responsibility for making those functions.</p> <p>(A) Diagrammatic explanation of member decision making bodies (accesses through a live link so it is always up to date)</p> <p>(B) Council (*including explanation of Local Choice Functions)</p> <p>(C) Cabinet (*including Joint arrangements/ASDVs)</p> <p>(D) Committees (*including joint arrangements/ASDVs)</p> <p>(E) Officer delegations (*including Proper Officer provisions and a Diagram of officer structure/council management to explain roles of senior officers accessed through a live link so it is always up to date)</p> <p>Formats will be consistent throughout with links to other relevant parts of the constitution and to other relevant documents e.g. links from the Planning Committee arrangements direct to relevant rules of procedure, planning protocol etc.</p>
3	Rules of Procedure	<p>Sets out the procedural rules relating to all Council activities grouped into the following sections</p> <p>(A) Rules of debate at meetings</p> <p>(B) Access to documents and information</p> <p>(C) Finance rules</p> <p>(D) Contract rules</p> <p>(E) Employment rules</p>

Part	Title	Contents
4	Codes and Protocols	<p>Sets out codes and protocols covering members' and officers' conduct including</p> <ul style="list-style-type: none"> • Member Code of Conduct • Officer Code of Conduct • Member/officer protocol • Whistleblowing policy
5	Members' Allowances Scheme	Members' Allowance Scheme
6	Index and Glossary	Index, definitions, acronyms

STATUTORY COMPLIANCE CHECKLIST

This compliance checklist sets out the statutory requirements for what must appear (somewhere) in a local authority constitution. It is a useful check to identify any missing areas and also a quick reference point for finding statutory information in the document. It will need to be updated if the format of the Constitution is changed.

STATUTORY REQUIREMENTS

THE LOCAL GOVERNMENT ACT 2000 (CONSTITUTIONS) (ENGLAND) DIRECTION 2000

The Secretary of State for the Environment, Transport and the Regions, in the exercise of his powers under sections 37(1)(a) and 48(7) of the Local Government Act 2000 (c.22) (the Act) and all other powers enabling him in that behalf, hereby directs all local authorities in England to which Part II of the Act applies as follows:

Miscellaneous and interpretation

In the direction:

"constitution" has the meaning given by section 37(1) of the Act,

"overview and scrutiny committee":

- a. in the case of a local authority which is operating executive arrangements has the meaning given by section 21(1) of the Act; or
- b. in the case of a local authority which is operating alternative arrangements means any committee or sub-committee appointed by the authority in accordance with regulations made under section 32(1) (b) of the Act to review or scrutinise decisions made, or other action taken, in connection with the discharge of functions of the authority.

In complying with this direction a local authority must have regard to any guidance issued for the time being by the Secretary of State under section 38 of the Act.

The constitution.

The constitution prepared and kept up to date in accordance with section 37(1) of the Act by a local authority which is operating executive arrangements or, as the case may be, alternative arrangements must include:

	Requirement of Direction	Council's Current Constitution
a	a summary and explanation of the purpose and content of the constitution;	Part 1 Part 2 – Chapter 1
b	a description of the composition of the council, the scheme of ordinary elections for members of the council and their terms of office;	Part 1 Part 2 – Chapter 2
c	a description of the principal roles and functions of the members of the council under executive arrangements or, as the case may be, alternative arrangements including the rights and duties of those members;	Part 1 Part 2 – Chapter 2
d	the scheme of allowances for members of the authority drawn up in accordance with regulations made under section 18 of the Local Government and Housing Act 1989 (c.42);	Part 6
e	a description of the rights and responsibilities of inhabitants of the authority's area including: <ul style="list-style-type: none"> i. their rights to vote in elections for the return of members of the authority; ii. their rights to access to information about the authority's activities; iii. their rights of access to meetings of the council, its committees and sub-committees and any joint committees established with any other authority; and iv. their rights of access to meetings of the executive and committees of the executive, 	Part 1 Part 2 – Chapter 3 Part 4 – Access to Information Procedure Rules
f	a description of the roles of the authority itself under executive arrangements or, as the case may be, alternative arrangements including: <ul style="list-style-type: none"> i. the functions which may be exercised only by the authority itself or which may to some extent be exercised only by the authority itself (including, in the case of a local authority operating executive arrangements any plans and strategies which are subject to approval or adoption by the authority itself by virtue of regulation 5 of, and paragraph 1 of Schedule 4 to, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853)); and ii. any rules governing the conduct and proceedings of meetings of the authority itself whether specified in the authority's standing orders or otherwise. 	Part 3 Part 4 – Council Procedure Rules

	Requirement of Direction	Council's Current Constitution
g	a description of the roles and functions of the chairman of the council (including a chairman entitled to the style of mayor).	Part 2 – Chapter 5
h	a description of the functions of the local authority executive which, for the time being, are exercisable by individual members of the local authority executive stating as respects each function, the name of the member by whom it is exercisable.	Part 2 – Chapter 7 Part 3 – Responsibilities of Individual Cabinet Members
i	a description of the functions of the local authority executive which, for the time being, are exercisable by the executive collectively or a committee of the executive, stating as respects each function, the membership of the body by who it is exercisable.	Part 2 – Chapter 7 Part 3 – Executive Functions; Responsibilities of All Cabinet Members
j	a description of those powers of the executive which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months.	Part 3 – Scheme of Delegation to Senior Officers
k	a description of the arrangements for the operation of overview and scrutiny committees including i. the terms of reference and membership of those committees and any rules governing the exercise of their functions; and ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise.	Part 2 – Chapter 6 Part 3 – Overview and Scrutiny Committees Part 4 – Overview and Scrutiny Procedure Rules
l	in the case of a local authority which is operating executive arrangements, a description of the roles of the executive, committees of the executive and members of the executive including: i. the roles, functions, rights, responsibilities and duties of members of the executive; ii. in the case of a local authority which is operating executive arrangements which include a leader and cabinet form of executive, any rules governing the election of the executive leader; iii. any rules governing the appointment of members of the executive; iv. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of the executive;	Part 2 – Chapter 7 Part 2 – Chapter 8 Part 3 Part 4 – Executive Arrangements and Cabinet Procedure Rules

	Requirement of Direction	Council's Current Constitution
	<p>v. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of any committees of the executive;</p> <p>vi. any provisions in the local authority's executive arrangements with respect to the appointment of committees of the executive; and</p> <p>vii. N/A</p>	
m	N/A	N/A
n	<p>a description of the roles of any committees or sub-committees appointed by the authority in accordance with section 101 of the Local Government Act 1972 (c.70) including:</p> <p>i. the membership, terms of reference and functions of such committees or sub-committees; and</p> <p>ii. any rules governing the conduct and proceedings of meetings of those committees or sub-committees whether specified in the authority's standing orders or otherwise.</p>	<p>Part 2 – Chapter 8</p> <p>Part 3</p> <p>Part 4 (Committee and Sub-Committee Procedure Rules)</p>
o	a description of those powers of the council which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months.	Part 3 – Scheme of Delegation to Senior Officers
p	<p>a description of the roles of the local authority's Standards Committee and any parish council sub-committee of the Standards Committee appointed in accordance with sections 53 or 55 of the Act including:</p> <p>i. the membership, terms of reference and functions of that committee or sub-committee; and</p> <p>ii. any rules governing the conduct and proceedings of meetings of that committee or sub-committee whether specified in the authority's standing orders or otherwise.</p>	<p>Part 3 – Audit and Governance Committee</p> <p>Part 4 – Committee and Sub-Committee Procedure Rules</p>
q	a description of the roles of any area committees appointed by the authority to exercise functions in accordance with regulations 16A of the Local Government (Committees and Political Groups) Regulations 1990 (SI 1990/1553) or, as the case may be, section 18 of the Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (SI 2000/2851) including:	<p>Part 2 – Chapter 9</p> <p>Part 4 – Committee and Sub-Committee Procedure Rules</p>

	Requirement of Direction	Council's Current Constitution
	<ul style="list-style-type: none"> i. the membership, terms of reference and functions of such committees; and ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise. 	
r	<p>a description of any joint arrangements made with any other local authorities under section 101(5) of the Local Government Act 1972 including:</p> <ul style="list-style-type: none"> i. the terms of those arrangements; ii. the membership, terms of reference and functions of any joint committees established under those arrangements; and iii. any rules governing the conduct and proceedings of meetings of those joint committees whether specified in the authority's standing orders or otherwise. 	<p>Part 2 – Chapter 10</p> <p>Part 4 – Finance Procedure Rules Section E External Arrangements [?]</p>
s	<p>a description of any arrangements made with another local authority for the discharge of functions by that other local authority or the executive of that other local authority in accordance with section 101(1)(b) of the Local Government Act 1972 or, as the case may be, Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.</p>	<p>Part 2 – Chapter 10</p>
t	<p>a description of the roles of officers of the local authority including:</p> <ul style="list-style-type: none"> i. the management structure for officers of the authority; ii. any arrangements made under section 101 of the Local Government Act 1972 or, as the case may be, section 14, 15 or 16 of the Act for the discharge of functions by officers of the authority; iii. the roles and functions of the head of paid service, monitoring officer and chief finance officer; iv. the code of conduct for local government employees issued by the Secretary of State in accordance with section 82 of the Act; v. any rules governing the recruitment, appointment, dismissal and disciplinary action for officers of the authority; vi. any protocol established by the authority in respect of relationships between members of the authority and officers of the authority. 	<p>Part 1</p> <p>Part 2 – Chapter 11</p> <p>Part 4 – Staff Employment Procedure Rules</p> <p>Part 5 – Officer Code of Conduct; Member / Officer Relations Protocol; Whistleblowing Policy</p>

	Requirement of Direction	Council's Current Constitution
u	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, committees and sub-committees of the authority, joint committees established with any other local authority, the executive and committees of the executive.	Part 4 – Access to Information Procedure Rules
v	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 information about the decisions made or to be made by in respect of local authority's functions and activities.	Part 4 – Access to Information Procedure Rules
w	a register stating i. 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 ii. the name of every member of each committee of the local authority's executive for the time being.	(i) Part 1 (ii) Part 3
x	a description of the rules and procedures for the management of its financial, contractual and legal affairs including: i. procedures for auditing of the local authority; ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise; iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and iv. rules and procedures in respect of legal proceedings brought by and against the local authority.	Part 2 – Chapter 13 Part 4 – Finance Procedure Rules Contract Procedure Rules
y	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, maintaining and updating that register.	Part 5 – Member Code of Conduct; Planning Protocol of Conduct
x	a description of the rules and procedures for review and revision of the authority's constitution and executive arrangements or, as the case may be, alternative arrangements	Part 2 – Chapter 1, Part 2 – Chapter 14

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EXTRACT FROM CONSTITUTION COMMITTEE MINUTES (4th August 2017)

2. Agrees a proposed vision for the production of a new Constitution as follows:
“to have a clear, succinct Constitution which is accessible, user-focused, provides helpful instruction and ensures good governance and transparency across all elements of service delivery”
3. Agrees the seven principles set out in the advice note as a starting point for the review of the Constitution and production of a proposed new Constitution, the principles being as follows:

The Constitution should:

- a. recognise the Council’s democratic leadership role;
- b. support, not hinder, the efficient exercise of democratic decision-making, good governance and the delivery of services;
- c. be modern in its language, format and presentation;
- d. be concise, covering only those essential issues which need to be in the formal Constitution and sign-posting to other documents and sources;
- e. recognise the new ways in which the Council operates (for example, through ASDVs and shared services);
- f. delegate decision-making to the most appropriate level with the right checks, balances and scrutiny; and
- g. be future proof, not requiring constant revisiting and updating.

TEMPLATE FOR ACTION LOG

Ref	Action	Assigned To	Deadline	Current Status	Date Completed

REPORTING FORMAT

The following format/structure must be adopted for reporting revised content back to Bevan Brittan:

SECTION 1

What content can be removed from the Constitution itself (where should it go, and what would be the proposed arrangements for signposting from the Constitution – if required – and its ongoing maintenance and review)?

Description (including relevant Chapter / Section Number)	From (page/para)	To (page/para)	Where to

SECTION 2

What content needs amending, and how should it been amended?

Description (including relevant Chapter / Section Number)	From (page/para)	To (page/para)	Suggested amendments

OFFICIAL

Description (including relevant Chapter / Section Number)	From (page/para)	To (page/para)	Suggested amendments

SECTION 3

What content needs replacing, and what should replace it?

Description (including relevant Chapter/Section Number)	From (page/para)	To (page/para)	Replaced with

SECTION 4

Is there any wholly new content required, and if so what is it and where might it be found?

Description	Where from	Where to (i.e. which Section)	New content