



Cabinet

Report for:	Cabinet
Title of report:	Constitution update
Date:	12 th July 2022
Report on behalf of:	Councillor Graeme Elliott, Portfolio Holder for Corporate Services
Part:	I
If Part II, reason:	N/A
Appendices:	Amended version of Part 3 and Part 4 of the Constitution Amended version of the Financial Regulations
Background papers:	Statutory guidance on the making and disclosure of Special Severance Payments by Local Authorities in England (May 2012)
Glossary of acronyms and any other abbreviations used in this report:	SLT – Strategic Leadership Team

Report Author / Responsible Officer

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Corporate Priorities	A clean, safe and enjoyable environment Building strong and vibrant communities Ensuring economic growth and prosperity Providing good quality affordable homes, in particular for those most in need Ensuring efficient, effective and modern service delivery Climate and ecological emergency
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Wards affected	All
Purpose of the report:	<ol style="list-style-type: none"> 1. To seek approval to amend the Constitution as set out in the body of the report. 2. To seek approval to amend the Council's Financial Regulations as set out in the body of the report. 3. To seek approval to amend the Council's Commissioning and Procurement Standing Orders as set out in the body of the report.
Recommendation (s) to the decision maker (s):	<ol style="list-style-type: none"> 1. That Cabinet recommend Council agrees the amendments to Part 3 of the Constitution as highlighted in the report and shown in tracked changes on the attached document entitled "Constitution – Part 3 – Responsibility for Functions" 2. That Cabinet recommend Council agrees the amendments to Part 4 of the Constitution as highlighted in the report and shown in tracked changes on the attached document entitled "Constitution – Part 4 – Rules of Procedure" 3. That Cabinet recommend Council agrees the amendments to the Council's Financial Regulations as highlighted in the report and shown in tracked changes on the attached document entitled "Financial Regulations v.1.1" 4. That Cabinet recommend Council approves the proposed amendment to Commissioning and Procurement Standing Orders as set out in section 4.5 to the report.
Period for post policy/project review:	The Constitution is kept under continuous review by the Monitoring Officer and updates are proposed to Cabinet when required.

1 Introduction

- 1.1 The Monitoring Officer is under a continuous duty to review the Constitution to ensure that it is up to date and provides an appropriate governance framework for all Council decision making.
- 1.2 Proposals for change may be prompted not only by formal internal reviews, but also by the Monitoring Officer, the Cabinet, other Members or officers and by public opinion.
- 1.3 The changes proposed in this report result primarily as a result of the Strategic and Corporate Leadership Team restructure and associated realignment of Cabinet Portfolios. Further changes are proposed in order to assist the operational effectiveness of the Council and these are set out and explained in the body of the report.

2 Leadership Team Restructure and realignment of Portfolios.

- 2.1 The restructure of the Council's Leadership Team is now complete and became operational in April of this year. The Constitution, including the Financial Regulations and the Commissioning and Procurement Standing Orders have therefore been reviewed to ensure that relevant job titles have been reviewed and functions are allocated to the correct post holder or councillor.
- 2.2 As part of the restructure, the Leader of the Council has reviewed the Cabinet Portfolios to ensure that they are correctly aligned to service areas. These changes were announced at Annual Council in May and have now been updated in the revised version of the Constitution.
- 2.3 Part 3 of the Constitution is the section which sets out the responsibilities for Council and Executive functions and a tracked changes version showing all proposed changes is attached to this report in Part 3 of the Constitution.
- 2.4 Part 4 of the Constitution is the Part which sets out the Rules of Procedure. There have been some very minor changes to this part of the Constitution as explained in paragraph 4.2 and a tracked changes version showing all proposed changes is attached to this report.

3 Update to the Financial Regulations

- 3.1 The Council's Financial Regulations form part of the Constitution and are reviewed periodically to ensure that they remain relevant throughout any structural or operational changes within the Council, as well as legislative changes and relevant best practice guidance.
- 3.2 The Financial Regulations, including recommended updates, can be found in the annexed tracked changes of the Regulations to this report. Details of the recommended changes to the current approved Regulations are set out below.
- 3.3 It is recommended that the Financial Regulations are updated throughout to reflect changes in Corporate Leadership Team responsibilities and role titles. This includes the designation of the Council's Chief Finance Officer as Section 151 Officer.
- 3.4 **Annex D Regulation D.4. Scheme of Delegation**

It is recommended that the Unit 4 Business World approval limit for Heads of Services be increased to match that of Assistant Directors at £250k. This approval limit relates to the approval of transactions in the Council's financial system. The recommendation will ensure approval parity between Heads of Service and Assistant Directors. This reflects the new Corporate Leadership Team structure and ensures financial transaction approvals are undertaken by those with the appropriate level of operational knowledge.

3.5 Annex E Section 1 Clause 3.h). Electronic Purchase Cards (EPCs).

It is recommended that Heads of Services are able to authorise higher transaction limits on EPCs cards, with the approval of the Section 151 Officer. This authorisation is currently undertaken by Assistant Directors, with the approval of the Section 151 Officer. This recommendation reflects the new Corporate Leadership Team structure and ensures the decision to assign EPC limits are undertaken by those with the appropriate level of operational knowledge.

4 Other material changes to Part 3 of the Constitution to note

4.1 The Constitution is kept under continuous review to ensure that it continues to provide a framework for effective and agile decision making. It is also reviewed to ensure that it considers any new and/or amended legislation or guidance. As a result of this review the following amendments are proposed:

4.2 New delegations relating to Special Severance Payments are proposed (see pages 100 and 112 of the annexed Part 3) following new guidance published in May 2022 entitled "Statutory guidance on the making and disclosure of Special Severance Payments by Local Authorities in England"

Special Severance Payments are payments made to employees when leaving employment in public service. Employers may sometimes consider making such a payment in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract via a settlement agreement.

The new guidance requires:

- payments of £100,000 and above must be approved by a vote of full council, as set out in the Localism Act 2011
- payments of £20,000 and above, but below £100,000, must be personally approved and signed off by the Head of Paid Service, with a clear record of the Leader's approval and that of any others who have signed off the payment
- payments below £20,000 must be approved according to the local authority's scheme of delegation.
- Where the payment is to the Chief Executive, to avoid a conflict of interest, the payment should be approved by a panel including at least two independent members.

The amendments proposed to the Constitution delegate authority to the Chief Executive to approve payments of £20,000-£100,000 subject to agreement with the Leader of the Council in consultation with the S.151 Officer and Monitoring Officer. Any payments above £100,000 will be approved by Full Council. Any payments up to £20,000 must be approved by a member of the Strategic Leadership Team.

Any payment to the Chief Executive will be approved by the Appointments Committee who will co-op two Independent Persons for the purpose of approving any payment. An amendment to the Terms of Reference for the Appointments Committee has been made to confirm this position at page 177 of Part 4 of the Constitution (copy annexed).

4.3 An existing delegation has been moved to the Chief Executive delegations on page 100 relating to the approval of early retirement and redundancy proposals. This delegation previously existed under the Corporate Director, Finance and Resource post (now deleted), see page 112 of Part 3 annexed to this report for the existing wording, and was previously subject to a three year pay-back test. This test has been amended as it is operationally restrictive and replaced with a more relevant test of Best Value which means that a longer term view of the proposal can be considered in appropriate circumstances.

4.4 A new delegation is also recommended to the Chief Executive to approve funding for interim resource to deliver corporate priorities. The Chief Executive will report all expenditure and funding made pursuant to this delegation to Cabinet and Council every six months. This delegation will give the Chief Executive the clear operational flexibility to ensure that appropriate resource is in place to deliver the Council's corporate priorities and this delegation will only be exercised where an approved budget is in place in accordance with the Council's financial regulations.

4.5 In support of this proposal an amendment is also proposed to the Council's Commissioning and Procurement Standing Orders to provide an ability for the Chief Executive to exempt procurement standing orders where there is a need to procure interim resource to deliver corporate services. A record of the reason that this provision is used will be completed and passed the Head of Commercial Development. The wording for the new exemption will be:

"The approval of the Chief Executive has been obtained to procure supplies or services for interim resource to deliver corporate priorities. A record of the decision including the reason for the decision must be passed to the Head of Commercial Development with 5 days of the decision being taken."

This additional flexibility will enable the Chief Executive to respond to requirements for resourcing without going through a full competitive procurement process. The exemption will be used in limited circumstances but will be enable the organisation to respond in an agile manner to resourcing requirement if needed and will also be reported to Audit Committee in accordance with agreed practices for exemptions.

5 Options and alternatives considered

No other options are considered relevant as the changes are required to ensure that the Council can operate with the appropriate delegations in place.

6 Consultation

There has been consultation with the Council's Strategic Leadership Team, Corporate Leadership Team and senior Cabinet Members to ensure that the appropriate delegations are in place to enable the Council to operate effectively

7 Financial and value for money implications:

The scheme of delegation in Part 3 of the Constitution, the Financial Regulations and the Commissioning and Procurement Standing Orders provides a framework for effective and compliant decision making and should help to ensure that decisions are taken at the right level and therefore improve the efficient running of Council services.

8 Legal Implications

The scheme of delegation in Part 3 of the Constitution, the Financial Regulations and the Commissioning and Procurement Standing Orders ensure that decisions are made by the correct Committee, Councillor or Officer according to the function being discharged. Failure to have an effective and up to date Constitution in place could lead to legal challenge

9 Risk implications:

Failure to have an effective and up to date Constitution in place could lead to legal challenge and/or operational challenges as Members, Officers and the public will not be clear how or by whom decisions should be taken.

10 Equalities, Community Impact and Human Rights:

There are no Equalities, Community Impact of Human Rights implications arising from this report.

11 Sustainability implications.

There are no sustainability implications arising from this report.

12 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)

There are no implications arising from this report.

13 Statutory Comments

Monitoring Officer:

The scheme of delegation in Part 3 of the Constitution provides a framework for effective decision making and should ensure that officers act within their appointed delegations and therefore minimise legal challenge.

S151 Officer:

The majority of minor changes made to the constitution reflect the approved Council restructure that has been undertaken at Tier 2 and Tier 3 levels in the organisation. This includes the financial regulation changes proposed at para 3.4 and 3.5, which have been proposed to bring approval limits in line with officer seniority.

The additional proposed delegations to the Chief Executive will be monitored and reported to members accordingly in line with current financial regulations.

A change in the financial assessment of proposed redundancies and retirements to a Best Value assessment from a rigid 3 year pay back criteria allows for a more analytical view of these complex decisions from a value for money perspective. As detailed in the constitution, and in line with good practice guidelines, the Chief Executive would seek advice from both the S151 and Monitoring officer's prior to making these decisions.

14 Conclusions:

The changes proposed in this report are required to ensure that the Council has an appropriate framework in place to facilitate effective decision making and remain agile to enable it to deliver the Council's priorities. The recommendations in the header of this report are therefore presented to Cabinet for referral to Council for final approval.