

Subject: Review of the Constitution
Date of Meeting: 12 July 2018
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**Ward(s)
affected:** All

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report proposes changes to the Council's Constitution for approval by Policy, Resources & Growth Committee and (where relevant) Council. The proposals set out in the report have been reviewed by the Constitutional Working Group as indicated below.

2. RECOMMENDATIONS:

Policy, Resources & Growth Committee

- 2.1 That the Policy, Resources & Growth Committee approves the recommendations set out at paragraph 4.1 and appendix 1 (updates and revisions to the Scheme of Delegations – general) and paragraphs 4.2 to 4.8 and appendix 2 (updates and revisions to the Scheme of Delegations – Field Officers).
- 2.2 That the Policy, Resources & Growth Committee recommends to full Council the proposed changes to the Council's Constitution set out at paragraphs 4.9 and 4.10 and appendix 3 (Council Procedure Rules) and paragraphs 4.11 to 4.12 and appendix 4 (Code of Conduct for Employees), as well as those in paras 4.13 to 4.15 and appendix 5 (Terms of Reference of the Conservation Advisory Group).

Full Council

- 2.3 That the proposed changes to the Council's Constitution, recommended in paragraph 2. 2 above, be approved and adopted.

Both Policy, Resources and Growth Committee and Full Council

- 2.3 That the Chief Executive and Monitoring Officer be authorised to take all steps necessary or incidental to the implementation of the changes agreed by the Policy, Resources and Growth Committee and by full Council, and that the Monitoring Officer be authorised to amend and re-publish the Council's constitutional documents to incorporate the changes.
- 2.4 That the changes proposed in paragraph 2.1 Appendix 1 come into force immediately following their approval by Policy Resources and Growth

Committee, while those proposed in paragraphs 4.2 to 4.8 and Appendix 2 come into force once Field Officers have been formally appointed and have completed their induction and relevant training.

- 2.5 That the changes proposed in para 2.2 come into force immediately following their adoption at full Council.

3. CONTEXT

- 3.1 The Council is required to keep its Constitution under review with a view to achieving efficiency, economy and effectiveness. The cross-party Constitutional Review Working Group (CRWG) was set up to assist with this by considering proposals and advising the Council on proposed changes to the constitution. The proposals in this Report were reviewed by the CRWG.

4. PROPOSALS

Revisions to the Scheme of Delegations to Officers - General

- 4.1 A number of relatively minor amendments to the above Scheme are proposed in order to ensure clarity in the Council's existing arrangements and/or to update them across a range of different functions. The changes are summarised below and set out in detail at [Appendix 1](#):
- A- An additional 'saving' provision is proposed in the Introduction to the Scheme with the aim of affording the Council additional protection from potential challenge to the exercise of its powers
 - B- The urgency powers in case of an emergency are updated with reference to resilience and are also framed in a way which makes explicit their application in situations where an emergency has not been declared but officers in gold command need to take necessary steps pursuant to the Council's arrangements. In addition it is proposed that the power of Chief Officers to exercise functions outside their respective service areas in an emergency is made explicit.
 - C- The wording of the delegations to the Executive Director – Economy, Environment and Culture in respect of planning-related enforcement is clarified
 - D- The proposed changes to the powers exercisable in relation to Gypsies, Roma and Travellers, as well as Van Dwellers, seek to refine the existing delegations. They do this by describing the Council's powers and responsibilities in a way which emphasises their application in relation to encampments and sites (both authorised and unauthorised), this as opposed to the groups potentially thereby affected.
 - E- It is proposed that the delegation in relation to licensing enforcement be made more explicit
 - F- It is proposed that delegations in relation to Sunday trading be updated.

Direct Delegations to Field Officers

- 4.2 Proposals to delegate powers directly to the new cross-cutting 'Field Officers' were previously considered by Policy Resources & Growth Committee in

February 2017. That Committee gave approval in principle to the proposal to amend the Constitution to permit relevant direct delegations to be included in the Scheme of Delegations to Officers.

- 4.3 The Field Officer proposals have since been considered by the Council's Neighbourhoods, Inclusion Communities and Equalities Committee, which on 22nd January 2018 approved a revised business case, with the expectation that revised draft delegations would be brought to PRG Committee for its approval.
- 4.4 At the last CRWG in March 2018, it was noted that the PRG Committee would need to approve the revised draft delegations in order for the Field Officers to be able to exercise the Council's powers in relation to relevant enforcement tasks. The CRWG had previously (in November 2017) considered a sample draft delegation, which had been drafted in accordance with an approach endorsed by Counsel as a means of enabling the cross-cutting Field Officers to exercise powers otherwise cascaded within particular area service areas.
- 4.5 Detailed direct delegations to Field Officers have now been drafted and are attached to this Report as Appendix 2. It should be noted that these direct delegations do not represent an increase to the powers exercisable currently by officers. The direct delegations seek only to extend to the Field Officers the powers already being exercised by specialist officers in relevant service areas.
- 4.6 To ensure that the Scheme is clear that the same powers are to be exercised concurrently by Field Officers as by specialist officers, the powers potentially available to Field Officers are described in terms which mirror the powers delegated currently in the Scheme of Delegations to Officers. That Scheme makes specific delegations to Chief Officers in relation to the services for which they are responsible. It does this in terms which although seemingly wide-ranging are in reality limited once they are cascaded down to enforcement officers, this because of the terms of the specific authorisation and direction which they are required to act within.
- 4.7 The proposed arrangements meet the overarching objective of ensuring that Field Officers are able to support the Council's specialist officers by carrying out a proportion of the more routine enforcement related tasks which specialist officers currently do in relevant functions. It must be emphasised that it is not envisaged that Field Officers will act to the fullest extent possible under these draft delegations. Field Officers will only be authorised by those officers supervising and managing them to exercise a limited range of the delegated powers potentially available to them under the Scheme. Moreover they will do this only once they have been signed off as having satisfactorily completed a prescribed programme of training designed with the objective of equipping them to perform their key role effectively.
- 4.8 In any event, the direct delegations explicitly provide that Field Officers must act under the overarching direction and guidance of officer(s) within the relevant service area at all times: a provision which aims to ensure consistency in enforcement practice across the organisation.

Council Procedure Rules

- 4.9 The proposed amendments to the CPRs indicated in [Appendix 3](#) include new deadlines for the submission of Public Questions and Deputations. By amending the deadline to 12 noon on the second working day after the publication of the agenda (instead of 12 noon on the fifth working day before the meeting), additional time will be allowed to permit democratic engagement while also permitting sufficient time for necessary advice to be sought where needed in advance of the meeting.
- 4.10 A further amendment is proposed in relation to Oral Questions to require Members to provide sufficient detail regarding the subject matter in the description to permit a meaningful response to be provided. This proposal was discussed by the Constitutional Working Group alongside the other proposed amends to the Council Procedure Rules outlined here. However cross party consensus was not achieved regarding this particular proposal.

Code of Conduct for Employees

- 4.11 The Council's Code of Conduct for Employees has not as yet been amended to remove the requirement to declare membership of any organisation not open to the public or that has secrecy about rules, membership or conduct. This requirement is no longer imposed by the Council on its elected members. This is as a result of European case law which held that a "blanket" requirement that employees notify membership of a secret association was a breach of article 11 of the ECHR (the freedom of assembly and association).
- 4.12 To ensure that the Code for Employees is compliant, and to bring it into line with arrangements in relation to councillors, it is proposed that the amendment indicated in [Appendix 4](#) be made.

Conservation Advisory Group – Terms of Reference

- 4.13 The Council's Conversation Advisory Group ('CAG') is one of the Council's advisory bodies, which was set up to provide input into relevant planning-related matters, this in the way outlined in its detailed terms of reference.
- 4.14 There has been a discussion about the future of the Conservation Advisory Group and its membership with the newly-elected joint Chairs of CAG. This conversation triggered a review which included the following objectives, as well as that of ensuring that the ToR better reflected changes within the Planning service and the fact that reduced resources are available from the council to support CAG:
- To streamline and clarify the objectives and role of CAG
 - To reflect CAG's primary role in supporting the Planning service
 - To ensure that the membership of CAG is:
 - a. manageable in size
 - b. well balanced
 - c. primarily locally based
 - d. democratically accountable and open

- 4.15 The draft amended terms of reference appended here as Appendix 5 were drafted by officers in partnership with CAG and approved in principle at a CAG meeting. They were subsequently subject to minor amendments by Planning WG, with cross party support, when it met on 31st May. A further minor amendment to one sentence were then proposed by CAG and reviewed by the Chair of Planning to provide reassurance that the proposed wording did not conflict with the views expressed at the Working Group.

5. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 5.1 The Committee or Council could decide not to implement the changes set out in the report.

6. COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 The Cross Party Constitutional Working Group have been consulted where indicated and Leaders Group considered the proposals set out in the report.

6. CONCLUSION

- 6.1 The proposals reflect the Council's ongoing efforts to review and streamline its processes in an ongoing way so as to achieve both financial savings and increased efficiency. It is therefore recommended that they are pursued.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

There are no direct financial implications arising from this report.

Finance Officer Consulted: James Hengeveld Date: 03/07/2018

Legal Implications:

- 7.1 Policy Resources and Growth Committee, and where specified in this Report full Council, have the authority to make the changes to the Council's Constitution as set out in the report. The intention is for the proposals to be implemented with immediate effect unless otherwise indicated.

Lawyer Consulted: Victoria Simpson

Date: 16.05.18

Equalities Implications:

- 7.2 None

Sustainability Implications:

- 7.3 None

Any Other Significant Implications:

7.4 None identified

SUPPORTING DOCUMENTATION

Appendices:

1. Part 6 - the Scheme of Delegations to Officers – General (tracked changes) (extracts)
2. Draft direct delegations to Field Officers, to be inserted into Part 6 - the Scheme of Delegations to Officers (tracked changes)
3. Part 3.2 – Council Procedure Rules (tracked changes) (extracts)
4. Part 8.8 - Code of Conduct for Employees (tracked changes) (extracts)
5. Part 4 – Scheme of Delegation to Committees and Sub Committees – Terms of Reference of the Conservation Advisory Group (tracked changes)