

TITLE	Changes to the Constitution
FOR CONSIDERATION BY	Council on 22 November 2018
WARD	None Specific
LEAD OFFICER	Andrew Moulton, Assistant Director, Governance

OUTCOME / BENEFITS TO THE COMMUNITY

Reviewing the Council's Constitution on a regular basis ensures that it is relevant and fit for purpose.

RECOMMENDATION

That Council agree the following changes to the Constitution as recommended by the Constitution Review Working Group:

- 1) that Section 3.3 Freedom of Information Policy and Section 3.4 Data Protection Policy be amended as set out in Appendix 1 to the report;
- 2) that Section 3.5 Petition Scheme be amended as set out in Appendix 2 to the report;
- 3) that Sections 4.2.9.3 Notice of Question (Public), 4.2.10.4 Notice of Questions (Members), 5.4.27 Notice of Question (Public – Executive) and 5.4.36 Rules of Procedure for Questions by Members (Members – Executive) be amended as set out in paragraph 3 of the report;
- 4) that Sections 4.2.9.8 Supplementary Question [Public] and 4.2.10.7 Supplementary Question [Member] and Sections 5.4.32 Supplementary Question [Public - Executive] and 5.4.39 Supplementary Questions [Members – Executive] be amended as set out in paragraph 4 of the report;
- 5) that Section 4.4.23 Membership [Health and Wellbeing Board] be amended as set out in paragraph 5 of the report;
- 6) that Section 8.1 Planning Committee Terms of Reference be amended as set out within paragraph 6 of the report;
- 7) that Section 8.2.7 Speaking by Members other than [Planning] Committee members be amended as set out within paragraph 7 of the report;
- 8) that Section 11.3 Scheme of Delegation to Officers be amended as set out in Appendix 3 to the report;
- 9) that Section 13 Procurement and Contracts Rules and Procedures and Section 5.5.1 List of Items Delegated to Individual Executive Members be amended as set out in paragraph 9 of the report;
- 10) minor amendments as set out in Appendix 4 to the report.

SUMMARY OF REPORT

Chapter 1.1.4 of the Council's Constitution states that the Monitoring Officer will monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

The report contains revisions to a number of areas in the Constitution which were agreed by the Constitution Review Working Group (CRWG) at their meeting on 22 October 2018.

Background

SECTION 3 – CITIZENS AND THE COUNCIL

1. The Constitution Review Working Group considered proposals to amend Section 3.3 Freedom of Information Policy and Section 3.4 Data Protection Policy to reflect the implementation of the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 and an update in procedures. The revised sections can be found at Appendix 1. Changes are shown in bold.

2. The Constitution Review Working Group considered proposals to amend Section 3.5 Petition Scheme to clarify the process, particularly around the submission of electronic petitions. The revised sections can be found at Appendix 2.

SECTION 4 - THE COUNCIL MEETING AND SECTION 5 - THE EXECUTIVE

3. The Constitution Review Working Group considered proposals to amend those sections (Sections 4.2.9.3 Notice of Question (Public), 4.2.10.4 Notice of Questions (Members), 5.4.27 Notice of Question (Public – Executive) and 5.4.36 Rules of Procedure for Questions by Members (Members – Executive) within the Constitution relating to the submission of questions to Council meetings and other committee meetings by the Public and Members, to make clear that a question may be submitted on a matter included in the Public Session of the meeting's Agenda or an urgent question, up to 10am on the working day prior to the meeting.

The following changes are therefore proposed to Sections 4.2.9.3, 4.2.10.4, 5.4.27 and 5.4.36: Changes are shown in bold italics.

4.2.9.3 Notice of Question

*Questions relating to urgent matters may be submitted in writing to the ~~Democratic Services Manager~~ **Democratic and Electoral Services Lead Specialist** by no later than 10.00am on the **working** day before the meeting, and must receive the consent of the Mayor or Chairman of the relevant Committee and Member to whom the question is to be put. Questions of this nature may only relate to urgent issues which have arisen after the publication of the Agenda.*

*A question may be submitted on a matter included in the Public Session of a particular meeting's Agenda, (except in relation to 'business' matters such as approval of the minutes) provided that notice to this effect is received by the Chief Executive by no later than 10.00am on the **working** day prior to the day of the meeting.*

4.2.10.4 Notice of Questions

A Member may only ask a question under Rule 4.2.10.2 or Rule 4.2.10.3 if either

*b) if, in the Mayor/Chairman's opinion, the question relates to an urgent matter, they have the consent of the Mayor/Chairman of the meeting and Member to whom the question is to be put, and the content of the question is given to the Chief Executive by 10.00am on the **working** day prior to the meeting. Questions of this nature may only relate to an urgent issue which has arisen since the publication of the Agenda.*

*In addition, Members of the Council may submit one question on a matter included in a particular meeting's Agenda (except in relation to the approval of the Minutes and other business matters) provided that notice to this effect is received by the Chief Executive by no later than 10.00am on the **working** day prior to the meeting.*

This change will also be replicated in Sections 5.4.27 Notice of Question (Public – Executive) and 5.4.36 Rule of Procedure for Questions by Members.

4. The Constitution Review Working Group reviewed the Council meeting process and suggestions from Members for improvements to this process.

It is proposed that those asking supplementary questions at Council, other committee and Executive meetings shall speak for no longer than one minute when asking the question.

The following change is therefore proposed to Sections 4.2.9.8 Supplementary Question [Public] and 4.2.10.7 Supplementary Question [Member] and Sections 5.4.32 Supplementary Question [Public - Executive] and 5.4.39 Supplementary Questions [Members – Executive]:

4.2.9.8 Supplementary Question [Council – Public]

A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his/her original question but must not include any substantial new subject matter. A supplementary question must arise directly out of the original question or the reply. The Mayor/Chairman may reject a supplementary question on any of the grounds in [Rule 4.2.9.5](#) or if he/she feels that new subject matter is being introduced.

No person asking a supplementary question shall speak for longer than one minute. *If the Mayor/Chairman considers that the questioner is making a statement he/she may rule that the questioner be not heard further.*

4.2.10.7 Supplementary Question [Council – Member]

A Member asking a question under [Rule 4.2.10.2](#) or [4.2.10.3](#) may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply and must not introduce any new subject matter. The Mayor/Chairman may reject a supplementary question on any of the grounds in [Rule 4.2.10.5](#).

No person asking a supplementary question shall speak for longer than one minute. *If the Mayor/Chairman considers that the questioner is making a statement he/she may rule that the questioner be not further heard.*

This change will also be replicated in 5.4.32 Supplementary Question [Executive-Public] and 5.4.39 Supplementary Question [Executive – Member]

5. The Health and Wellbeing Board agreed at its meeting on 8 November 2018 to appoint the Director with responsibility for planning and localities to the Board and that

the amendment of Section 4.4.23 Membership [Health and Wellbeing Board] of the Constitution as follows, be recommended:

m) Director with responsibility for planning and localities

SECTION 8 – REGULATORY AND OTHER COMMITTEES

6. Currently the exercise of the Council's functions under Part III (Public Rights of Way) of the Wildlife & Countryside Act 1981 is part of the Planning Committee's Terms of Reference. The Constitution Review Working Group considered a proposal that this be delegated to the Director Locality and Customer Services in consultation with the Borough Solicitor. The Constitution Review Working Group considered this request and the fact that it was supported by the Chairman of the Planning Committee and the relevant Officers, and felt that this would be appropriate.

The following changes are therefore proposed to Section 8.1 Planning Committee Terms of Reference and Section 11.3 Scheme of Delegation to Officers.

8.1 The Planning Committee will carry out functions relating to town and country planning, highways and public rights of way as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations) save for those contained in Part III of the Wildlife and Countryside Act 1981 and those which have not been delegated to the Assistant Director, Place Head of Development Delivery and Head of Development Management and Regulatory Services Assistant Director, Delivery and Infrastructure...

**Section 11.3.9 Director of Environment Locality and Customer Services
[Officer delegations]**

v) in consultation with the Borough Solicitor, functions in relation to Part III of the Wildlife and Countryside Act 1981.

7. With regards to the Planning Committee Terms of Reference, the Constitution Review Working Group considered a proposal to amend Section 8.2.7 *Speaking by Members other than Committee members* to further clarify Ward Member speaking rights at Planning Committee meetings and also the process for registering to speak.

The following change to Section 8.2.7 Speaking by Members other than [Planning] Committee members is therefore proposed:

Section 8.2.7 Speaking by Members other than [Planning] Committee members

'...Members of the Council who are not Members of the Planning Committee may at the discretion of the Chairman also address the Committee. However this right will normally be restricted to Members from the Ward in which an application is situated. Local Ward Members will be allowed to speak once, for a maximum of three minutes total, shared between all registered relevant Ward Members.

Members must register their intention to speak either in support or objection to an application as appropriate with Democratic Services by 5.00pm on the day prior to the meeting.'

SECTION 11 – OFFICERS

8. Following the implementation of the 21st Century Council programme there has been a change in the Council's management structure which has resulted in some changes in responsibility for different service areas. The Constitution Review Working Group considered an amended list of delegations to the Chief Executive, Directors and a number of other senior officers which reflected these changes. The revised Section 11.3 Scheme of Delegation to Officers, can be found at Appendix 3.

SECTION 13 PROCUREMENT AND CONTRACTS RULES AND PROCEDURES AND SECTION 5 EXECUTIVE

9. The Constitution Review Working Group considered a number of proposed amendments to Section 13 Procurement and Contract Rules and Procedures and Section 5.5.1 Items Delegated to Individual Executive Members, which are highlighted and set out below.

The changes proposed to Section 5.5.1 and 13.3.1.1 relate to Procurement Business Cases. The proposed changes would provide for some flexibility in the governance mechanism in situations where a quick reaction is necessary to secure a beneficial business opportunity and Executive approval cannot be obtained within the required time frames. The additional change to Section 13.3.1.1 removes the requirement for a Business Case to be produced for all direct award waivers, which is not in line with the Council's Waivers Policy.

The proposed change to Section 13.2.2 is to bring the Council's Constitution in line with the current requirement of Regulation 6(19)(b) of the Public Contracts Regulations 2015.

The proposed change to Section 13.2.3 removes the requirement for raising a waiver every time a procurement procedure is used which is not open or restricted as this is now recorded in the Procurement Business Case.

The proposed change in Section 13.3.3.2 is to bring the threshold for signing of contracts by two authorised officers in line with the threshold for legal review of contracts, following through the introduction of a standard set of terms and conditions to be used for all contracts under £100,000, implemented in March 2018. The threshold for signing of contracts by authorised officers, as opposed to involving a Solicitor, is proposed to be increased to £100,000 to match.

Section 5.5.1 Items to Delegated Individual Executive Members

5.5.1 g) Approving Procurement Business Cases and awarding of contracts that have a value of £500,000 or more up to the limits specified in section 5.1.9.4. Each Procurement Business Case for contracts exceeding the value of £500,000 should be approved by the Executive Member for the relevant Service area together with the Executive Member with responsibility for finance, unless the relevant Executive Member is responsible for finance, in which case the approval must be carried out in conjunction with the Deputy Leader of the Council, or if the Deputy Leader is the Executive Member with

responsibility for finance, in which case the approval must be carried out in conjunction with the Leader of the Council

The following Note be added as a footnote to this:

Note1: The default option is Executive approval.

In exceptional circumstances, where this is not practical and delay will have negative financial consequences, approval by two Executive Members is allowed. This will usually be the Executive Member for the relevant Service area and the Executive Member with responsibility for finance, unless the relevant Service area is Finance, in which case approval must be carried out in conjunction with the Deputy Leader of the Council, or if the Deputy Leader is the Executive Member with responsibility for finance, in which case the approval must be carried out in conjunction with the Leader of the Council. (Rule 13.3.1.1 refers). An explanation of the exceptional circumstances must be included within the Individual Executive Member Decision report.

13.3.1.1 Procurement Business Case (including options appraisal)

A formal business case is required for any procurement with a total value above £50k (refer to Rule 13.2.2 for estimating value) with the varying levels of approval shown in the table below:

	No formal business case required	Head of Service Assistant Director & Director Approval	Executive Approval (see Note1 below)
Goods and Services	< £50k	£50k - £500k	> £500k
Schedule 3 Services	< £50k	£50k - £615k	> £615k
Works	< £50k	£50k - £4,551k	> £4,551k

Note1: The default option is Executive approval.

In exceptional circumstances, where this is not practical and delay will have negative financial consequences, approval by two Executive Members is allowed. This will usually be the Executive Member for the relevant Service area and the Executive Member with responsibility for finance, unless the relevant Service area is Finance, in which case approval must be carried out in conjunction with the Deputy Leader of the Council, or if the Deputy Leader is the Executive Member with responsibility for finance, in which case the approval must be carried out in conjunction with the Leader of the Council. (Rule 5.5.1g refers). An explanation of the exceptional circumstances must be included within the Individual Executive Member Decision report.

13.2.2 Estimating Contract Value

All contract opportunities are required to state a total ascertainable value (or a value range) so that potential suppliers can assess their suitability for the opportunity and the appropriate procurement process can be utilised. The estimate includes both revenue and capital elements of any contract. There are several requirements in PCR2015 (Regulation 6) that specify how the value of the opportunity should be calculated.

Refer to the Estimate of Value document and contact Procurement for advice.

Where no definition of total value is possible, the estimated contract value shall be calculated as 24 **48** x the monthly value.

13.3.1.1 Procurement Business Case (including options appraisal)

‘.... The value of a Business Case shall not be distorted or split with the aim of avoiding any threshold. The exact nature of any Business Case will vary depending on the requirements of the services being procured but all should consider the elements listed above to an appropriate degree. In consultation with Procurement, Directorates may design their own templates and requirements for Business Cases, in particular where regularly recurring or rapid procurements are required.

Further guidance on the production of a Business Case is available from Procurement.

~~A Business Case must also be produced for ALL direct award waivers, adhering to the same approval levels. They must be supported with the Suppliers proposal, including terms and conditions and full quotation details in line with the Waivers Policy (see Appendix 2).~~

13.3.2 Overview of Required Procurement Procedures

.. For procurements exceeding £50k, the default procedures are the Open or Restricted procedures only or the use of existing frameworks from other procurement bodies; in order to use another procedure, officers need to consult with Procurement and ~~raise a waiver...~~

13.3.3.2 Acceptance of Tenders and Signing of Contracts:

Activity	Under £50K Up to £100,000	£50K – £100K	£100,000 to £500,000	Greater than £500,000
Acceptance of tenders (prior to contract award)	Assistant Director	Director		Director by Material Decision
Contract Signature	None if PO or Purchasing Card. Otherwise 2 Officers named on “List of Authorised Officers...”	Two Officers: 1. Head of Legal Services Lead Specialist Legal or Qualified Solicitor or Barrister 2. Any Officer in 1 or Director or a member of Corporate Leadership Team (CLT) (facilitated by Shared Legal Solutions)		Sealed as a deed.

10. The Constitution Review Working Group reviewed a number of minor changes to the Constitution. These amendments include updating references to legislation and processes for clarification purposes and are highlighted and detailed in Appendix 4.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0		
Next Financial Year (Year 2)	£0		
Following Financial Year (Year 3)	£0		

Other financial information relevant to the Recommendation/Decision
There are no financial implications arising from this report.

Cross-Council Implications
None

List of Background Papers
The Council's Constitution

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