

TITLE	Changes to the Constitution
FOR CONSIDERATION BY	Council, 20 October 2022
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 Monitoring Officer via the Constitution Review Working Group that:

- 1) The following proposals relating to the following areas of Council Rules of Procedure be agreed:
 - a. sections relating to Member and public questions as set out in paragraphs 1.1-1.4 of the report;
 - b. that Rules 4.2.1.1 Timing and order of business [Annual Council] and 4.2.2.1 Timing and order of business [Ordinary Council meetings] be amended as set out in paragraph 2 of the report;
 - c. that Rule 4.2.13.13 Motions on Expenditure or Revenue be deleted and Rule 4.2.11.2 be amended as set out in paragraph 3 of the report;
 - d. proposals relating to statements by the Leader of Council etc and from the Council Owned Companies being incorporated into the Minutes of Committee and Board Meetings and Ward Matters agenda item as set out in paragraph 4 of the report;
 - e. that Rule 4.2.2.1 Timing and Order of Business (Ordinary Meetings be amended as set out in paragraph 5 of the report;
 - f. that Rules 4.2.9.5, 4.2.10.5, 5.4.29 and 5.4.37 – Scope of Public and Member Questions be amended as set out in paragraph 6 of the report;
 - g. Rules 4.2.8 Duration of Meetings, 4.2.8.1 Consideration of Motions and 4.2.12 Motions without Notice be amended, as set out in paragraph 7 of the report;
- 2) that it be noted that Rule 5.2.10.4 [Responsibilities of Executive Member for Environment, Sport and Leisure] as set out in paragraph 8 of the report, will be amended;
- 3) it be noted that Rule 5.2.7.17 [Responsibilities of Deputy Leader and Executive Member for Housing] as set out in paragraph 8 of the report, will be added;

- 4) that Rule 5.4.19 Timing of the [Executive] meeting be amended as set out in paragraph 9 of the report;
- 5) that Section 6.2 Overview and Scrutiny, be amended as set out in paragraphs 10 and 11 of the report:
- 6) changes to Chapter 8.2 – Planning Committee Procedure Rules as set out in paragraph 12 of the report;
- 7) changes to Chapter 8.3 – Planning Member Guidelines on Good Practice as set out in paragraph 13 of 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 several areas in the Constitution which were agreed by the Constitution Review Working Group (CRWG) for recommendation to the Monitoring Officer, at their meetings on 12 August 2022 and 7 October 2022.

Background

Chapter 4.2 – Council Rules of Procedure

At its meeting on 12 August 2022 the Constitution Review Working Group considered several proposed amendments including a number relating to the Council Rules of Procedure.

1 4.2.10 Questions by Members

1.1 Currently Members ask their questions and receive the answers at the relevant meeting. They are then allowed to ask a supplementary question, which must relate either to the question they asked or the response they were given.

It is proposed that the answers to all Member questions should be uploaded onto the website by noon of the day of the meeting and only supplementary questions be allowed to be asked at the meeting. This provision would not apply to urgent questions submitted after the meeting agenda had been published.

The following amendment is proposed:

4.2.10.6 Response [Member Questions]

An answer may take the form of:

- a) a direct oral answer;*
- b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or*
- c) where the reply cannot conveniently be given orally, (including where such an answer would require the disclosure of exempt information) a written answer circulated later to the questioner within seven working days of the meeting, and included in the Minutes of the meeting.*

Please note this deadline does not apply to supplementary questions, which can take longer to respond to, due to the often complex nature of the subject matter.

Answers to Member questions that are included in the agenda will not be answered at the meeting but will instead, be uploaded onto the relevant agenda page on the Council's website by noon of the day before the meeting. Member questions i.e., those that relate to items on the agenda, received after publication of the agenda will still be answered at the relevant meeting.

No person answering a question shall speak for longer than two minutes.

1.2 It is also proposed that Executive and Deputy Executive Members should not be permitted to submit questions to Council meetings as they have the ability to contact their Executive Member colleagues direct. They should instead be raising their question with Members of the Executive outside of the meeting.

The following amended wording is proposed:

4.2.10.2 Questions on Notice to Council

Subject to Rule 4.2.10.4 a Member of the Council* may ask a Member of the Executive, a Deputy Executive Member, the Chairman of any Committee or Board, the Council's representative on an outside organisation one question on any matter in relation to which the Council has powers or duties or which affects the Borough
.....

****Members of the Executive and Deputy Executive Members are not entitled to ask questions of other Executive Members or Deputy Executive Members. Please note this rule applies only to meetings of Council.***

1.3 It was felt that it could be made clearer that members of the public asking questions at committee should be treated with respect.

The following amendment is proposed to Rule 4.2.9.11 Response:

4.2.9.11 Response:

...When answering a question, all questioners should be treated with respect.

1.44.2.9.9 Written Answers

The Working Group considered proposals regarding written responses to supplementary questions.

The following amendment is proposed:

4.2.9.9 Written Answers (public questions)

~~....Please note that the written reply does not apply to supplementary questions, which can take longer to respond to, due to the often complex nature of the subject matter and such replies will not be recorded in the Minutes of the meeting.~~ **Please note that supplementary questions may take longer to respond to due to the often complex nature of the subject matter, therefore it may not always be possible to include written responses to supplementary questions in the draft minutes. If this is the case, then the response will be uploaded onto the relevant agenda page on the Council's website as a background document.**

2. 4.2.1.1 Timing and order of business [Annual Council] and 4.2.2.1 Timing and order of business (Ordinary Council meetings)

A Member of the public has highlighted that an incorrect reference has been made to Rule 4.2.2.1. It is proposed that this be amended to read '4.2.2.2.'

3. Motions on Expenditure or Revenue

The current wording of this rule is as follows:

4.2.13.13 Motions on Expenditure or Revenue

Any motion which would result in a significant increase in capital or revenue expenditure, a significant reduction in the revenue of the Council, or involves the disposal of a significant asset, shall when seconded stand adjourned without discussion to the next meeting of the Executive, with a report back to the next ordinary meeting of the Council. This Rule does not apply to any Motion proposed

at the Budget meeting of the Council. A significant decision is one that involves spending or receiving £1,000 or more.

Although Members recognise that there should be some mechanism to prevent a motion being agreed, that commits the Council to spending unbudgeted funds or would lead to a reduction in revenue, it is felt that the current wording of 4.2.13.13 does not work.

It is therefore proposed that in future once a motion has been received by Democratic Services it will be sent to the Chief Finance Officer who will provide a statement on any financial implications associated with the motion. This information will then be included with the motion in the relevant Council agenda.

It is proposed to delete Rule 4.2.13.13 and instead amend the first paragraph of Rule 4.2.11.3 Motion set out in Agenda as follows:

4.2.11.2 Motion Set out in the Agenda

Motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Member giving notice states, in writing, that they propose to move it at a later meeting or withdraw it. ***A statement from the Chief Finance Officer, setting out the financial implications of the proposal(s) contained in the motion, will also be included in the agenda.***

4. 4.2.10.9 Questions in Relation to the Minutes of Committee and Board Meetings and Ward Matters

It is proposed that in future items shown under Rules 4.2.2.1p) (to consider any statements by the Leader of the Council, Executive Members and Deputy Executive Members) and q) (to receive statements from the Council Owned Companies) should be included under Rule 4.2.2.1o) (to receive Minutes of Committees and Sub-Committees and to deal with Ward matters, subject to the provisions of Rule 4.2.10.9).

The intention is that statements under p) and q) above would be provided 6 clear working days in advance of the meeting and included in the Minute volume, which is published as a background document to the Council Agenda.

Given the additional items being incorporated into Rule 4.2.2.1o) it is proposed that the time for this agenda item be extended from 20 minutes to 30 minutes.

The following changes are therefore proposed to the Constitution:

- a. Rule 4.2.2.1o) be amended as follows:

To receive, ***subject to the provisions of Rule 4.2.10.9:***

- i) Minutes of Committees and Sub-Committees and to deal with Ward matters, ~~subject to the provisions of Rule 4.2.10.9;~~
- ii) ***Statements by the Leader of the Council, Executive Members and Deputy Executive Members (subject to 4.2.2.1p);***
- iii) ***Statements from the Council Owned Companies.***

- b. Amend Rules 4.2.2.1p) as follows and delete 4.2.2.1 q, with the remaining items renumbered accordingly.

4.2.1.1 p) *to consider any statements by the Leader of the Council that are urgent or constitutionally required e.g. changes to the composition of the Executive and reporting on special urgency decisions taken etc. The Leader will speak for no more than 5 minutes* ~~Executive Members and Deputy Executive Members;~~

- c. Rule 4.2.23 (Statements by the Leader of Council, Executive Members and Deputy Executive Members) be amended as follows and Rule 4.2.24 (Statements from the Council Owned Companies) be deleted and the remaining items to be renumbered accordingly.

2.2.23 Statements by The Leader of The Council, ~~Executive Members and Deputy Executive Members~~

At each Ordinary meeting of the Council, provision shall be made for the Leader of the Council, ~~Executive Members and Deputy Executive Members~~ to make statements to the Council that are urgent or constitutionally required e.g., changes to the composition of the Executive and reporting on special urgency decisions taken etc. The Leader will speak for no more than 5 minutes.

~~These statements shall primarily be to advise the Council of items of interest which have been dealt with by the Executive recently or are due to be dealt with in the near future. Speeches of a party political nature will not be allowed.~~

~~When making such a statement, no Member, except with the consent of the Council, shall speak for more than 5 minutes.~~

~~The time allowed for statements under this rule shall not exceed 20 minutes.~~

5. 4.2.2.1 Timing and Order of Business (Ordinary Meetings)

The Working Group proposed that those business items under 4.2.2.1 j-m) which are only to note should have a time limit of 10 minutes for debate. This would only apply to meetings of Council and Special Council Executive. The following amendment is proposed.

Each item considered under j)-m) will have a time limit of 30 minutes for debate. Where the item is only 'to note' it will have a time limit of 10 minutes for debate [please note that this Rule only applies to meetings of Council and the Special Council Executive Committee]

6. Rules 4.2.9.5, 4.2.10.5, 5.4.29 and 5.4.37 – Scope of Public and Member Questions

The above rules state that a question may be rejected if it “is substantially the same as a question which has already been put at or submitted to the meeting or at a meeting of the Council or Executive or any other Committee in the past six months.” The Working Group proposed the following amendment:

c) is substantially the same as a question which has been put at or submitted to the meeting or at a meeting of the Council or Executive or any other Committee in the past six months;* or

*

Should a question be rejected under section c) questioners will be informed that the same question or substantially same question has been received in the past six months and will be provided with a copy of the answer that was previously provided.

7. 4.2.8 Duration of Meeting

The Working Group considered proposals regarding the duration of meetings. Members have proposed the following:

It is proposed that normal Council meetings conclude after a maximum of 3 hours unless business remains on the agenda, in which case it would automatically be extended by 30 minutes. Meetings of Annual Council would conclude after a maximum of 2.5 hours unless business remains in which case it would automatically be extended by 30 minutes.

4.2.8 Duration of Meeting

In the case of ordinary Council and Special Council Executive Committee meetings, if it has not concluded after 3 hours from the start of the meeting and business on the agenda remains outstanding, the meeting will be automatically extended by a further 30 minutes, after which the meeting by 10.30pm will adjourn immediately. In respect of the Annual Council Meeting, if it has not concluded after 2 1/2 hours from the start of the meeting and business on the agenda remains outstanding, the meeting will be automatically extended by a further 30 minutes, after which the meeting will immediately adjourn. the conclusion time at which the meeting will adjourn is 9.00pm. If, once a Motion to continue the meeting under [Rule 4.2.12\(m\)](#) has been proposed and seconded, (which can only be done up to 30 minutes before the conclusion time of the meeting) the majority of Members present vote to continue, the meeting will continue for a further period not exceeding 30 minutes from the specified conclusion time of the meeting ie until 11.00pm or 9.30pm for Annual Council.

Remaining business will be considered at a time and date fixed by the Mayor/Chairman. This does not include motions, which will be deemed to have fallen if time does not permit consideration of them, see [Rule 4.2.8.1](#). If the Mayor/Chairman does not fix a date, the remaining business will be considered at the next ordinary meeting, unless there is agreement between the Group Leaders that there are no matters for decision outstanding.

In respect of meetings of Council Committees and Sub Committees, unless the majority of Members present vote for the meeting to continue, any meeting that has not concluded by 10.30pm will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If the Chairman does not fix a date, the remaining business will be considered at the next ordinary meeting, unless there is agreement between the Group Leaders that there are no matters for decision outstanding.

4.2.8.1 Consideration of motions

A motion cannot be moved if there is only 15 minutes remaining before the meeting is due to conclude, be it 10.15pm or 10.45pm. If at the time the meeting is due to conclude ***within 15 minutes***, be it 10.30pm or 11.00pm, a Motion is under discussion, the debate on that Motion will cease immediately and the Mayor will put the Motion to the vote without further discussion.

4.2.12 Motions without Notice

~~m) to continue the meeting beyond 10.30pm (or 9.00pm for Annual Council) in accordance with Procedure Rule 4.2.8;~~

Renumber remaining items under this Rule.

8. Chapter 5.2 – The Executive – Composition and Areas of Responsibility

8.1 Rule 5.2.10.24 currently states:

To develop and manage the Council's approach to:

- *Travellers*
- *Flytipping*
- *Vermin*
- *Noise*
- *Bonfires*

It is proposed that the word “travellers” be deleted and replaced by “***unlawful encampments***”.

8.2 The Working Group noted a request to add the following to the Deputy Leader and Executive Member for Housing’s list of responsibilities:

5.2.7.17

To lead on the relationship between Town and Parish Councils.

9. Section 5.4.19 Timing of the [Executive] meetings

It is proposed that 5.4.19 be amended as follows –

Insert

e) the Chair of the meeting may give a speech of up to 5 minutes;

Subsequent sections to be renumbered.

10. Section 6.2 – Overview and Scrutiny Committees Terms of Reference

At its meeting on 5 October 2022 the Overview and Scrutiny Management Committee agreed to propose the establishment of an additional Overview and Scrutiny Committee, the Climate Emergency Overview and Scrutiny Committee, to Full Council. The Constitution Review Working Group noted this proposal.

It is proposed that the terms of refence be added at Section 6.2.5 and that the subsequent sections be renumbered.

The Working Group also considered the following resultant changes to Section 6 as set out below.

6.1.2 Membership of the Overview and Scrutiny Management Committee

The Overview and Scrutiny Management Committee shall comprise 12-non-Executive Members of the Council appointed at the Annual Council Meeting subject to the rules of Political Balance.

The Management Committee must include the Chairman and ~~Vice Chairman~~ of any Scrutiny Committee who will report back on the working of the relevant Committee.
The Vice Chairmen of each of the Scrutiny Committees must either be a member of the Management Committee or one of its substitutes.

Following the proposed establishment of an additional Overview and Scrutiny Committee it is proposed that not all scrutiny Vice Chairmen be required to be full members of the Overview and Scrutiny Management Committee (if not full committee members they must be a substitute). Should this change not be made then given the number of members on the Overview and Scrutiny Management Committee, and the number of other Overview and Scrutiny Committees, then this could lead to some Chairmen being required to be Vice Chairmen on other committees.

6.2.1 Appointment of Overview and Scrutiny Committees

The Council shall establish the following Overview and Scrutiny Committees:

d) Climate Emergency Overview and Scrutiny Committee – size of which to be determined at Annual Council.

This amendment references the Climate Emergency Overview and Scrutiny Committee as a committee.

11. The Working Group also considered additional proposed amendments to Section 6 which are detailed as follows:

6.1.2 Membership of the Overview and Scrutiny Management Committee

The Overview and Scrutiny Management Committee shall be comprised of 12 non-Executive Members of the Council. The size of the Committee will be determined at, and the appointment appointed of Committee Members will take place at the Annual Council Meeting subject to the rules of Political Balance.

This amendment is proposed to highlight that the size of Overview and Scrutiny Management Committee is subject to the rules of Political Balance and will be determined at the Annual Council meeting.

6.2.1 Appointment of Overview and Scrutiny Committees

The Council shall establish the following Overview and Scrutiny Committees:

a) Children’s Services Overview and Scrutiny Committee - ~~8 Members~~ size of Committee to be determined at Annual Council

b) Community and Corporate Services Overview and Scrutiny Committee - ~~8 Members~~ size of Committee to be determined at Annual Council

c) Health Overview and Scrutiny Committee - ~~10 Members~~ size of Committee to be determined at Annual Council

It is proposed that section 6.2.1 be amended to reflect that the size of the Overview and Scrutiny Committees will be determined at the Annual Council meeting.

6.2.1.1 Substitutes

~~Two substitute Members from each Political Group for each Committee shall be appointed at Annual Council for the forthcoming Municipal Year. Substitute Members from each political group shall be appointed at Annual Council for the forthcoming Municipal Year. Each political group will be entitled to the same number of substitutes as it has Members on the Committee.~~

It is proposed that 6.2.1.1 be updated reflect current practice.

12. Chapter 8.2 - Planning Committee Rules of Procedure

The Working Group considered the following proposals to Rules of Debate [Planning Committee] which was previously considered by the Planning Committee.

8.2.8 Rules of Debate

Debates at the Planning Committee shall take place as follows:

- a) *The Officer will put forward his/her recommendation prior to the application being debated. **Following the debate a member of the Committee will either propose the Officer recommendation or an alternative proposal, both of which will need to be seconded. The Officer recommendation or alternative proposal will then be voted upon.** ~~any proposal (Motion) which is different to or negates the Officer recommendation must be moved and seconded before the recommendation is voted upon. Should no alternative proposal be proposed and seconded the Committee will proceed straight to the vote on the Officer recommendation.~~ Any amendments to the **Officer recommendation decision**, for example to remove a refusal reason, to remove or vary conditions, or to add an additional informative, should be voted upon prior to the close of the debate;*
- b) *~~If a Member wishes to put forward a different recommendation to that contained in the report, then this may be formally proposed and seconded as a Motion. If the amendment is carried, it becomes the substantive Motion; if lost, a vote is taken on the original recommendation;~~*
- c) *If a Member wishes to make a proposal to negate the Officer's recommendation, they may formally propose a Motion if nothing has yet been moved. If proposing the refusal or approval of an application against the Officer recommendation, clear planning reasons for the proposal must be given in order for it to be acceptable. This applies equally to proposals to defer the application for a site visit. If such a Motion is passed it becomes the Committee decision. If defeated, then another Member may propose the Officer's recommendation;*
- d) *A Member may propose an amendment to vary the decision, for example, to remove a refusal reason or remove/vary conditions. The usual rules relating to voting on an amendment apply*
- e) *It is important to note that, if a Motion to refuse an Application is proposed, seconded and defeated, no further Motion to refuse may be moved. This also applies if a Motion to approve is defeated;*

- f) *In the rare event that Motions to approve and refuse an application are both declared lost, the application will be deemed to have been determined in accordance with the Officer recommendation.*

13. Chapter 8.3 – Planning Member Guidelines on Good Practice

The Working Group considered the following proposed amendment from the Chairman of the Planning Committee who wanted to ensure that any decisions made by the Committee were done so on the facts presented in the agenda etc and at the meeting and not on political lines. The following proposed amendment was considered by the Planning Committee:

8.3.12 Decision Making

8.3.12.2

~~Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision.~~ ***When making any decision you must only consider the planning merits of the application against the Local Plan, adopted local and national planning policies and any other material planning considerations relevant to the proposal being considered. Ordinarily, this information is within the planning officers report, the submitted planning documentation, information presented at the meeting or at the site visit (if applicable) and planning considerations presented by the public speakers and members of the committee. All other matters are not relevant and should not considered in the decision making process. In essence, every member of the committee must exercise their planning judgement solely based upon planning merits.*** If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information, if necessary, seek to have the application deferred.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe funding pressures, particularly in the face of the COVID-19 crisis. It is therefore imperative that Council resources are focused on the vulnerable and on its highest priorities.

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

Other financial information relevant to the Recommendation/Decision

There are no financial implications associated with this report.

Cross-Council Implications

None

Public Sector Equality Duty

This report has had due regard to the public sector equality duty and where applicable and available has included information relating to impacts upon people with protected characteristics and inequality.

List of Background Papers

Council's Constitution

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