



SHEFFIELD CITY COUNCIL Report to Council

Report of: General Counsel (and Monitoring Officer)

Date: 15th May 2024

Subject: Changes to the Constitution

Author of Report: Jason Dietsch, Head of Democratic Services

Purpose of Report:

This report seeks approval for changes to be made to various elements of the Council's Constitution, to bring it up to date. The changes include recommendations of Governance Committee in respect of the role of Policy Committee Chairs and Public Questions; recommendations made by the Council's Monitoring Officer in respect of complaints as recommended by Strategy and Resources Policy Committee, for reasons of clarification/simplification, or otherwise to reflect recent changes; and the annual review of Financial Procedure Rules (Financial Regulations).

Recommendations:

That the Council :

(a) approves the changes to the various Parts of the Constitution, as outlined in sections 3.2 to 3.5 of the report and as set out in appendices 1 to 10; and

(b) approves the wording of the Scheme for Public Involvement in Council Meetings, as set out in Appendix 11, for publication on the Council's website and authorises the Governance Committee to review and approve changes to the Scheme save that the Monitoring Officer is authorised to make minor or consequential changes to the Scheme for reasons of clarification or efficacy.

Background Papers: NONE

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial & Commercial Implications
NO Cleared by:
Legal Implications
YES Cleared by: Andrea Simpson
Equality of Opportunity Implications
YES Cleared by: as reported to Governance Committee
Climate impact
NO
Tackling Health Inequalities Implications
NO
Human rights Implications
NO
Economic impact
NO
Community safety implications
NO
Human resources implications
NO
Property implications
NO
Area(s) affected
None
Is the item a matter which is reserved for approval by the City Council?
YES
Press release
NO

1. Introduction

- 1.1 This report seeks approval for changes to be made to various elements of the Council's Constitution, to bring it up to date. The changes include recommendations of Governance Committee in respect of the role of Policy Committee Chairs and Public Questions; recommendations made by the Council's Monitoring Officer in respect of complaints as recommended by Strategy and Resources Policy Committee, for reasons of clarification/simplification, or otherwise to reflect recent changes; and the annual review of Financial Procedure Rules (Financial Regulations).

2. Background

- 2.1 An updated constitution for the City Council, reflecting the committee system of governance to be operated by the Council from the Municipal Year 2022-23, was approved at the annual meeting of the Council held on 18th May 2022. In approving the Constitution, the Council authorised the Director of Legal and Governance (now General Counsel) to undertake any minor and consequential drafting changes as may be necessary as the new system is embedded.
- 2.2 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, whilst others are a matter for the Council to choose. The Constitution contains 17 Articles in Part 2, which set out the basic rules governing the Council's business. Part 3 of the Constitution sets out who is responsible for making what decisions, including remits of Committees and arrangements for delegation to officers. More detailed procedures and codes of practice are provided in separate rules and protocols contained within the other parts of the Constitution.
- 2.3 The Council has a legal duty to keep its constitution up to date. In accordance with Article 16 of the Constitution (Review and Revision of the Constitution), changes to the Constitution will only be made with the approval of the Full Council, after consideration of the proposal by a Committee of the Council, the Chief Executive or the Monitoring Officer.
- 2.4 In addition, however, the Monitoring Officer, in consultation with the Lord Mayor, has delegated authority to make any minor and consequential drafting changes to the Constitution.
- 2.5 Updates to the Constitution have subsequently been approved at the Council meetings held on 20th July, 14th September, 2nd November, and 14th December 2022, on 20th February 2023, at the annual meeting on 17th May 2023, on 6th September 2023 and on 7th February 2024, in accordance with this duty to keep the Constitution up to date.

3. Proposed Changes and Reasons

3.1 As mentioned in section 1 of this report, the latest proposed changes broadly fall into three categories. Further details of the changes are set out in sections 3.2 to 3.5 below.

3.2 Part 2 - Articles of the Constitution

3.2.1 Part 2 Article 6 – The Leader, Deputy Leader and Group Leaders:

In Art 6.04 the Role and Function of the Deputy Leader has been amended to include being the Lead Member for Customer Experience (including complaints) to promote a positive complaint handling culture as recommended by Strategy and Resources Policy Committee at its meeting on 17th April 2024.

3.2.2 Part 2 Article 7 – Policy Committees:

In Art 7.02 the Role of the Policy Committee Chair has been updated as recommended by Governance Committee at its meeting on 28th February 2024.

In Art 7.03(a) the statutory health scrutiny powers have been amended to reflect a legislative change which came into force on 31st January 2024: the local authority no longer has the power of referral to the Secretary of State; instead the Secretary of State must be notified of proposals by the health body and has the power to intervene. Health Scrutiny Sub-Committee was advised of this change at its meeting on 14th March 2024. A corresponding amendment has been made to the Terms of Reference in Part 3.3.1.

3.2.3 Part 2 Article 13 – Officers:

In Art 13.04 the Functions of the Chief Finance Officer have been amended to correct a longstanding omission of a statutory duty. This amendment aligns to an amendment to the Financial Procedure Rules described in paragraph 3.4.4 below.

3.2.4 The proposed changes are set out in Appendices 1, 2 and 3 to this report.

3.3 Part 3 - Responsibility For Functions

3.3.1 Part 3.3 – Matters Delegated to Committees:

In Part 3.3.1 Matters Reserved to all Policy Committees (Contracts) the term ‘Commonly Recurring Items’ has been changed to ‘Commonly Arising Items’ with a minor amendment to the definition to clarify when such a decision is not reserved to a Policy Committee.

Strategy and Resources Policy Committee Terms of Reference have been amended to include “Lead responsibility for complaints including monitoring of complaint handling performance” as recommended by Strategy and Resources Policy Committee at its meeting on 17th April 2024.

An amendment has been made to the Charity Trustee Sub-Committee Terms of Reference to clarify the decisions regarding use of a charitable asset that fall within the Sub-Committee’s remit.

Finance Committee Terms of Reference have been amended:

- Council budget monitoring takes place quarterly, not monthly;
- Capital Approval wording has been amended to clarify the process;
- The power to refer matters to Strategy and Resources Policy Committee (in common with Policy Committees) has been made explicit.

Health Scrutiny Sub-Committee Terms of Reference have been amended to reflect the legislative change described above in paragraph 3.3.2. Wording has been added to confirm that the consultation duty of NHS bodies and health providers continues.

In Part 3.3.5 Audit and Standards Committee Terms of Reference have been amended to reflect the complaints responsibility of Strategy and Resources Policy Committee: specific responsibility for monitoring complaints performance has been removed. Any issues arising from the Annual Governance Statement will continue to fall within the Committee’s general risk management remit.

The Governance Committee will further review the remits of Policy Committees over the coming year and make such recommendations to Full Council as it thinks necessary.

3.3.2 Part 3.5 – Arrangements for the Delegation of Functions to Officers:

At 3.5.1 wording has been added to confirm that General Delegations to Officers are subject to the same conditions as Matters Reserved to all Policy Committees.

At 3.5.2 (Grant Aid) wording has been added to confirm that the agreement of the Chief Finance Officer is required before a decision can be taken that the Council is to be Accountable Body or third party guarantor.

At 3.5.10 wording has been amended to confirm the otherwise reserved decisions that may be made in a case of Extreme Urgency.

3.3.3 The proposed changes are set out in Appendices 4 and 5 to this report.

3.4 Part 4 - Rules Of Procedure

3.4.1 Part 4A - Council Procedure Rules:

In CPR 10.1 (Notices of Motion to Council) and CPR 16.1 (Members' Questions at Ordinary Meetings of the Council) the words "(except January)" have been deleted: ordinary meetings of the Council are no longer held in January so this wording is obsolete and confusing.

In CPR 15 amendments have been made to the procedure for Public Questions, adding the ability of members of the public to make statements and removing the pre-meeting procedural elements, as recommended by Governance Committee at its meeting on 27th March 2024. The report to the Committee stated that "*It is proposed that in future the ability for public questions is retained in the constitution, but that the detail of how questions should be asked are contained in a scheme published on the Council's website.*". The deleted elements have been incorporated into the draft scheme. Further details of the proposed scheme are set out below at paragraph 3.6 of this report.

CPR 16 has been amended to clarify the nature of and the procedure for Members' Questions. The amendments include addressing an anomaly whereby questions to "a Member appointed by the Council to serve on an external body or joint committee" have been within the same category as questions to the Leader or Chairs in CPR 16.1 whereas "questions relating to the discharge of the functions of the South Yorkshire Joint Authorities and of the South Yorkshire Mayoral Combined Authority" had separate arrangements at CPR 16.6. There is a requirement in section 41 of the Local Government Act 1985 that arrangements be made for questions concerning the Joint Authorities (there is no such requirement for the Combined Authority or other bodies) but not that these be special arrangements. The amendments will enable all Member questions, to the Leader, Chairs, or appointed members of the Joint Authority, Combined Authority or any other body to be treated in the same way,

CPR 18.8 (Voting on Appointments) has been amended to incorporate the process agreed for appointment of the Leader at the Annual Meeting of the Council in May 2023. Additional wording at CPR 24.1 (Appointment and Removal of Leader and Deputy Leader) confirms that the process in CPR 18.8 applies to such appointments.

3.4.2 Part 4E - Financial Procedure Rules (Financial Regulations):

The Financial Procedure Rules were completely reviewed and revised in 2023 and were approved by Full Council at its meeting in September 2023. Following the annual review by Finance Officers further changes are proposed, including:

- Updating the job title of the Director of People and Culture and references to Strategic Directors throughout;
- A definition of 'Qualified Accountant' which is consistent with section 113 of the Local Government Finance Act 1988 which sets

out the qualification requirements of a local authority's Chief Finance Officer;

- amendments requested by Internal Audit, to strengthen the Financial Regulations in respect of various issues noted through common experience of the team;
- Clarification that responsibilities for the Medium Term Financial Strategy, and decisions on commitments to funding in future years not covered by it, sit with Strategy & Resources Policy Committee;
- a clear link between the Financial Regulations and the new Corporate Debt Policy approved by Finance Committee in October 2023;
- removing references to the Financial Protocol and the Frameworks of Financial Accountability (both non-constitutional documents that are now obsolete) and incorporating some wording from the Financial Protocol for clarity of process;
- Clearly setting out the statutory responsibilities of the Chief Finance Officer.

The proposed changes are consistent with other parts of the Constitution. They were presented to and endorsed by Finance Committee at its meeting on 18th March 2024.

3.4.3 Part 4G – Area Committee Procedure Rules:

At section 1.4(b) wording has been amended to correct an erroneous reference to the Councillor Code of Conduct in connection with decision making.

3.4.4 The proposed changes are set out in Appendices 6, 7 and 8 to this report. Appendix 7 contains the revised Financial Procedure Rules and does not show individual changes.

3.5 Part 5 - Codes & Protocols

3.5.1 Part 5A - Councillor Code of Conduct:

In February 2024 Full Council approved, among other changes, minor amendments to Appendix B (Registering Interests) to make the process clearer (whilst not changing the interests that must be registered). The revised version still lacked sufficient clarity and so has been edited further.

3.5.2 Part 5B - Monitoring Officer Protocol:

In February 2024 Full Council approved changes to the Procedure for Dealing with Standards Complaints Regarding City, Parish and Town Councillors and Co-opted Members appended to the Monitoring Officer Protocol but no changes to the Protocol itself. Paragraph 1.2 of the Monitoring Officer Protocol is amended to make clear the circumstances when the Deputy Monitoring Officers may act.

3.5.3 The proposed changes are set out in Appendices 9 and 10 to this report.

3.6 Public Involvement in Council Meetings

3.6.1 As noted above at paragraph 3.4.1, at its meeting on 27th March 2024 Governance Committee considered and agreed to recommend to Full Council revised proposals to reform the approach to public questions and petitions, including that the ability for public questions be retained in the constitution, but that the detail of how questions should be asked are contained in a scheme published by the Monitoring Officer on the Council's website and overseen by the Governance Committee.

3.6.2 A scheme has been drafted which incorporates the pre-meeting elements of Council Procedural Rule 15, additional procedural guidance and other helpful information, together with tables setting out the detail for Council and Committee meetings and information relating to petitions.

3.6.3 The Governance Committee consulted widely on the proposals and considered best practice from other authorities. The proposed scheme increases the options for engaging with our meetings by providing a number of options for questions to be asked (including supplementary questions) and making a statement. The scheme now gives opportunity to take part in a meeting to those unable to attend in person.

3.6.4 In making these enhancements, to make best use of the time allocated in meetings and the public resources required in providing some answers, there is a limit on the length of questions, and which may be asked in the meeting. The reasons why questions may not be allowed are made clear and will be set out so a consistent approach can be taken in the future.

3.6.5 The proposed Scheme is set out in Appendix 11 to this report.

4. Risk Analysis and Implications of the Recommendations

4.1 Legal Implications

4.1.1 Except where delegated by Council as indicated at paragraphs 2.1 and 2.4, variations to the Constitution may only be made by Full Council.

4.1.2 Under Section 9P of the Local Government Act 2000, the Council must prepare a constitution and keep it up to date. It must be available to the public and, under the Local Government Transparency Code 2015, be published on the Council's website. The proposed changes in this report will bring parts of the Constitution up to date to comply with the legislation.

4.1.3 Other legal implications are stated in the body of the report.

4.2 Financial and Commercial Implications

4.2.1 There are no financial or commercial implications.

4.3 Equality of Opportunity Implications

4.3.1 As a public sector organisation, the Council has a number of statutory duties with regards to equality. The Council must consciously think about its statutory duties, both in the way we behave as an employer and when we develop and review policy and set our budgets.

4.3.2 There are no equality of opportunity implications arising from this report. Equality, diversity and inclusion was a specific theme in the scope of the six-month review of the operation of the Council's new governance arrangements led by the Governance Committee, resulting in changes to the Constitution which were approved at the Council's Annual Meeting on 17th May 2023. The work of the Governance Committee in 2023/24, looking at public questions and citizen engagement and involvement, has improved our approach to inclusive participation.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 The Council could choose not to approve the various changes being recommended, but this would conflict with the Council's aim to keep its constitution under review and its duty to keep it up to date.

6. REASONS FOR RECOMMENDATIONS

6.1 The approval of the updates to the Council's Constitution will enable the Council to meet its duty to keep its Constitution up to date. This is especially relevant and important as the operation of the Council's new committee system form of governance continues to develop over the coming months and early years ahead.

David Hollis
General Counsel (and Monitoring Officer)

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