

Cabinet

27 April 2016



Title	Review of the Constitution		
Purpose of the report	To make a recommendation to Council		
Report Author	Michael Graham, Head of Corporate Governance		
Cabinet Member	Councillor Ian Harvey	Confidential	No
Corporate Priority	This item is not in the current list of priorities but still requires a Council decision.		
Cabinet Values	Accountability		
Recommendations	<p>(i) Cabinet agrees changes to the delegations of all executive functions;</p> <p>(ii) Cabinet is asked to recommend the proposed changes to non-executive functions to Council; and</p> <p>(iii) Cabinet is asked to recommend the revised Constitution to Council for approval; and</p> <p>(iv) Cabinet is asked to recommend Council to agree to delegate to the Monitoring Officer, consequential changes to the Scheme of Delegations to Officers (part 3d) following the appointments of Group Heads.</p>		

1. Key issues

- 1.1 The Constitution was last reviewed in 2012. A recent internal review of the Constitution has highlighted the need for various technical amendments to be made to ensure that it remains appropriate and relevant as the main tool by which the Council manages its business and is kept up to date with changing legislation.
- 1.2 One of the major themes of change in the previous review undertaken in 2012 was that brought about by the Localism Act 2011 to abolish the statutory model code of conduct and the statutory scheme by which complaints against councillors were investigated. There have since been further regulations made under the Localism Act 2011 which have necessitated changes to the Constitution.
- 1.3 The summary below highlights the changes proposed, and a “track changed” version of the Constitution has been placed in the Members’ Room so that councillors can see where all the amendments are proposed. A copy can be made available for any councillor who is not able to attend the Council Offices to review the document.
- 1.4 All parts of the Constitution have been updated with reference to ‘councillors’ instead of ‘Members’ (where applicable) and ‘staff’ instead of ‘officers’, routine

changes to staff structure, grammatical and typographical errors, consistency of expressions and formatting.

Part 1 - Introduction

- 1.5 Constitution summary and explanation – minor revisions made to ensure that the section reads easily and that the explanation of the Leader and Cabinet style of governance is as simple as it can be.
- 1.6 A paragraph has been added by way of definition to confirm that singular includes the plural and that references to he or his are meant to include all genders.

Part 2 - Articles of the Constitution

- 1.7 Article 1 – updated aims and values of the Council.
- 1.8 Article 2 – minor changes of style.
- 1.9 Article 3 – Added the right of the public to record any meeting not being held in private by any medium available to them (introduced by the Openness of Local Government Bodies Regulations 2014).
- 1.10 Article 4 – Added all the functions which are the responsibility of the Council under various legislation.
- 1.11 Article 5 – no changes required.
- 1.12 Article 6 - no specific changes required though there is overlap with Roles of different councillors (Part 3f).
- 1.13 Article 7 – addition of cross-reference with Part 3f in relation to membership of Overview and Scrutiny Committee.
- 1.14 Article 8 – minor style changes.
- 1.15 Article 9 – no changes required.
- 1.16 Article 10 – Amended to reflect name of committee as the Member's Code of Conduct Committee, rather than the previous Standards Committee. Also clarified that the appointment of independent persons is the responsibility of this committee, as renewals to these appointments will be required shortly.
- 1.17 Article 11 – reordered paragraph 11.3 so that it reads more easily.
- 1.18 Article 12 - Amendments to officers' duties, to ensure that this is generic to allow for the changing structure.
- 1.19 Article 13 – updated in line with Local Government (Access to Information) Regulations 2012. Proposed increase from £100k to £164k in relation to criteria for Key Decisions. This has not been increased for some years. This proposed change mirrors the threshold for major procurements at EU level, but it would be in the discretion of the Council to raise it higher if considered appropriate.
- 1.20 Article 14 – minor style changes.
- 1.21 Article 15 – minor style change.
- 1.22 Article 16 – minor style change.
- 1.23 Schedule 1 – No changes required.

Part 3 - Responsibility for Functions

- 1.24 (a) Scheme of Delegation general introduction - The definition of Chief Officers has been amended to be in line with Article 12.
- (b) Terms of reference of Committees –
- 1.25 The Cabinet/Leader's local choice functions have been included in the Cabinet section.
- 1.26 Surrey First Joint Committee has been removed as the committee is now defunct.
- 1.27 The Licensing Committee section has been updated to move some of the wording from the Officer Scheme of delegations, in order to make it easier to read. Local choice functions have also been included in this section.
- 1.28 The Planning Committee section has been updated to move some of the wording from the Officer Scheme of delegations - this is designed to make it easier to read but it has no effect on the powers of either the Committee or the Head of Planning. The delegation to Committee in relation to applications with an increased floor space by change of use and those for Surrey County Council minerals and waste applications has been increased to apply to only those with over 2500m² net additional floorspace or land area. Local choice functions have also been included in this section.
- 1.29 The Cabinet agreed in July 2013 to form an Assets of Community Value Panel to consider applications under the new Community Right to Bid. The panel's membership and terms of reference, as agreed, have been added to this part.
- 1.30 (b) Member Development Policy Statement - no change required.
- 1.31 (c) Delegated functions in consultation with Cabinet Members or the Leader - these are a mix of executive and non-executive functions. Insofar as the executive functions are concerned the Leader has the ability to make changes. The Leader also has the ability to make changes to the roles of Cabinet Members listed in this section. Amendments have been made to delegation regarding asset disposals and acquisitions to be in line with the suggest amendment to the scheme of delegation to officers.
- 1.32 (d) Delegations to officers – The main changes to this document are the delegations for environmental health. The amount of legislation associated with these functions is immense, therefore it is suggested that these are amended to be more in line with the planning delegations. This eases reading and comprehension and will ensure that no legislation is missed as there is a catch all provision. Financial limits to some of the delegations have been increased to ensure that officers can take decisions quickly and are set at levels to reflect other standing orders and provisions. The other amendments are to ensure that decisions are being taken by officers who are in charge of that specific area and to ensure that current legislation is reflected in the delegations.
- 1.33 To ensure that these delegations are maintained at this level, it is suggested that the Monitoring Officer be delegated authority to amend the Scheme of Officer Delegation following the changes in staffing as a result of the Group Head appointments.

- 1.34 Appendix A - Employment policies, procedures and arrangements – updated to reflect the change to a new structure and to accommodate the proposed Deputy Chief Executive roles.
- 1.35 (e) Proper Officer functions – have been updated to reflect changes to legislation.
- 1.36 General Statutory Provisions - have been updated to reflect the departure of an Assistant Chief Executive.
- 1.37 (f) Roles of different councillors - updated as requested by Cabinet councillors.

Part 4 - Procedural Rules

- 1.38 (a) Council Standing Orders – the word ‘working’ has been added to the ‘five clear days’ in paragraph 2.1 in relation to the requirement of the Chief Executive to send notification of a meeting to councillors. The historic interpretation of ‘five clear days’ has been supported by case law to mean five periods of 24 hours running from midnight to midnight and should not include Saturdays or Sundays, so no change to the existing meaning is being suggested, the phrase is simply being clarified.
- 1.39 An additional requirement to take a recorded vote on the budget has been added in accordance with the Local Authority (Standing Orders) Regulations 2014.
- 1.40 Clarity is provided at paragraph 8.2 e) regarding membership of Audit Committee.
- 1.41 The Council at its meeting on 22 October 2015 agreed a motion for the singing of the National Anthem at a point in the proceedings to be decided by the Mayor. This applies to the Annual Council meeting and all ordinary meetings of Council but not extraordinary meetings. A change has been made to the running orders of these meetings to reflect the will of Council.
- 1.42 Finally, some numbering issues have been corrected.
- 1.43 (b) Overview and Scrutiny rules – I have removed matters arising and AOB from list of items on the agendas. This has been a custom and practice for many years, but it is generally considered as bad practice and is recommended for removal.
- 1.44 (c) Cabinet Procedure Rules – added at paragraph 11. other items of business which may be considered at Cabinet meetings, i.e. petitions, recommendations and minutes from the Local Plan Working Party and finance reports.
- 1.45 Annex A to the Cabinet Procedure Rules - this section is at the discretion of the Leader.
- 1.46 (d) Financial Regulations – More details have been included to the background section of these regulations as well as to the scope of the general financial responsibility of members and employees. Additional content and amendments to the financial accountabilities (Financial Regulation A) of Council, Cabinet and statutory officers. Amendment and additions to the responsibilities of the Chief Finance Officer. Updates arising from changes to the relevant legislation and Government guidance. Amendment to the key controls for risk management and internal audit requirements (Financial Regulation C). Amended process in relation to Contract Payments (Financial

Regulation D). These lengthy Financial Regulations are based on a national model but there is an intention of the Council's Finance section to streamline and undertake a more detailed review of this document in the next year

- 1.47 (e) Contract Standing Orders - The threshold values have been increased to be in line with current monetary value. The selection of bidders stage has been removed to be in line with EU procurement requirements for the removal of a pre-qualification stage for below threshold tenders. The requirement for member recorded opening of tenders has been removed on the basis that there is now a full audit trail as all such value procurements are through the Council's electronic procurement system.
- 1.48 (f) Officer Employment Procedure rules - the consequential amendments agreed at Council in July 2015 as a consequence of the Standing Orders Regulations 2015 will be published with the updated Constitution
- 1.49 (g) Access to Information rules - updated in line with regulations 2012 and central government guidance on open and accountable local government 2014.
- 1.50 (h) Budget and Policy Framework rules - Amendments to wording for clarity on process for development of the framework and for making decisions outside of that framework. Updates arising from changes to the relevant legislation.

Part 5 - Codes and Protocols

- 1.51 (a) Members Code of Conduct – No amendments made
- 1.52 (b) Staff Code of Conduct – Reviewed by the Members' Code of Conduct Committee in October 2014.
- 1.53 (c) Protocol for Member Officer Relations – changes made as suggested by a former Leader.
- 1.54 (d) Planning Code - Various amendments have been made after discussions with the Head of Planning and Housing Strategy and the Chairman of the Planning Committee.
- 1.55 Updates have been made in line with current legislation such as the removal of prejudicial and personal interests and the inclusion of pecuniary, non-pecuniary and conflict of interests as described in the Localism Act 2011. There have also been some minor amendments with regards to consistency such as the change of 'Councillor' to 'councillor'.
- 1.56 Changes have been made regarding lobbying on a particular Planning application. It was thought necessary to explain to councillors that they can have strong views on a particular application and can express those views in public as long as they retain an 'open mind', in the sense that councillors must have regard to all material considerations and be prepared to change their views if persuaded that they should at the associated Planning Committee, as required by the Localism Act 2011.
- 1.57 Additional explanations have been included to emphasise the distinction between predispositions and predeterminations. It was thought necessary to include a helpful guide to assist councillors in the decision making process and avoid any confusion relating to lawful decision making. It was also emphasised in this section of the importance of disclosing interests and

seeking advice from the Head of Corporate Governance with regards to pecuniary, non-pecuniary and conflict of interests.

- 1.58 After discussions with the Chairman of Planning Committee and the Head of Planning and Housing Strategy a call-in procedure has been created which formalises the stages which councillors are required to follow with regards to calling in planning applications to the Committee. A planning application other than those identified in the weekly Planning Publicity Schedule can be called in by a councillor for determination by the Committee. It is also proposed for councillors to activate the call-in by sending an email to specified Planning officers which identifies the planning reason why it should be determined by the Committee.
- 1.59 With regards to the decision making process at Planning Committee, some amendments have been made to improve the process at Committee.
- (i) Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation.
 - (ii) Councillors seeking information that is not within the report should request it a day in advance of the meeting rather than at the meeting when the answer is not always readily or easily available.
 - (iii) Councillors should not rely on officers to produce the planning reasons for their motion at a meeting. Councillors are instead encouraged to seek advice from the Head of Planning and Housing Strategy prior to the meeting.
- 1.60 Appendix A – Site Visits – The situations in which these formal visits take place has been reduced to one but this one has been widened to include applications 'of a nature that councillors feel unable to fully assess the scheme without a site inspection.' Other minor amendments have been made to keep the Constitution consistent, such as the change of 'Member' to 'councillor' and 'Officer' to 'member of staff' or 'staff'.
- 1.61 Appendix B – Public Speaking – The guidance note for public speaking has been removed as part of the Constitution as it is a separate document used by the Planning department and sent to objectors to planning applications. The Planning department regularly update this guidance note to be consistent with the 'Planning advice for Residents' webpage. Instead, Appendix B now just sets out the protocol for public speaking at the Committee.
- 1.62 (e) Confidential reporting Code – this is reviewed yearly by the Audit Committee and no changes are proposed at this review.
- 1.63 (f) Anti-Fraud, Bribery and Corruption Strategy – Minor amendments have been made to the Strategy to reflect changes to Central Government department and current structure.
- 1.64 (g) Code of Corporate Governance - The code has been updated to include the addendum for 'Delivering Good Governance in Local Government' which was published by CIPFA in 2012.
- 1.65 In terms of the Arrangements for Corporate Governance, evidence has been included to show that the Council's processes are regularly monitored and reviewed. This included the Annual Governance Statement and the Review of the Effectiveness of the System of Internal Audit
- 1.66 In terms of the appendix there have been some minor amendments in relation to consistency with the rest of the constitution.

- 1.67 (h) Monitoring Officer Code – Updated to reflect current legislation.
- 1.68 (i) Money Laundering Code – Updated to reflect current legislation and revisions due to the change of agency responsible for receiving reports from the Money Laundering Reporting Officer
- 1.69 (j) Policy on Gifts, Hospitality and Sponsorship – Minor amendment to emphasise wording regarding gifts offered but not taken.
- 1.70 (k) Conflicts of Interest policy – Minor amends to reflect current structure.

Part 6 - Members Allowances Scheme

- 1.71 The Members' Allowances scheme is publicised on the Council's intranet and has not previously been included in the Constitution. It is proposed to now include the scheme in its entirety within the Constitution to provide councillors with all the relevant information relating to their allowances including issues of tax declaration. As the members allowance scheme may change annually after the Council's budget decision, the updated scheme will be placed in the Constitution once it is agreed by Council.

2. Options analysis and proposal

- 2.1 Cabinet may accept all or some of the proposed amendments, or suggest additional amendments for consideration by the Monitoring Officer. The final changes may then be recommended by Cabinet to Council. Changes to the Constitution have to be subject of a report by the Monitoring Officer to the Council.

3. Financial implications

- 3.1 There are none

4. Other considerations

- 4.1 Surrey County Council Local Committee. The Council has received proposals from SCC to develop the current Local Committee (which is a committee of Surrey County Council) into a Joint Committee which is truly representative of both the County and the Borough. It is intended that this Committee will exercise powers on behalf of both organisations and that it will have dedicated budget for its powers. Precise terms of reference and remit have yet to be agreed with the County Council, but work is under way to achieve this. A separate report will be prepared for the Cabinet and Council to agree so that the changes will hopefully be effective in the new municipal year.

5. Timetable for implementation

The proposed changes will be considered by the Members' Code of Conduct Committee on 14 April 2015 and a recommendation made to Cabinet.

Background papers:

Track changed versions of the proposed alterations are available in the Members' Room and on request.