

22 November 2023

## REVIEW OF THE COUNCIL'S CONSTITUTION

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Exempt / confidential / not for publication	<b>No</b>
Council Plan reference	<b>Not in Council Plan</b>
Wards affected	<b>All wards</b>

### Executive summary

The Council's constitution was last fully reviewed in 2019. Since then, there have been various standalone updates that have been agreed by Council further to recommendations from committees, or after consultation with the Leaders of Political Groups. For example, the Local Government Association Model Code of Conduct was considered by the Standards Committee before being adopted by full Council in 2022.

It is good practice to keep the constitution under review and officers have been working for some months to check the various elements of the Council's constitution, predominantly to ensure legislative, consequential, and other updates are reflected. As part of this process, some proposed changes have already been considered by or will be considered by a relevant committee, before being referred to Council for agreement.

The Council's Constitution and associated documents are available in full on the [Modern.gov](#) pages of the Council's website. An overview of the various constitutional documents and the associated timescales is set out at **Annex A**. In addition to the changes proposed in this report, further amendments will be brought to full Council in the new year. Except in the case of new or completely redrafted documents, amendments are shown as tracked changes for ease of consideration.

#### 1. Decision/s to be made

- 1.1 That the Civic Honours Protocol attached at **Annex B**, be agreed.
- 1.2 That revised constitution documents (shown with track changes), be agreed:
  - a) Introduction, Summary and Explanation (**Annex C**);
  - b) Overview and Scrutiny Procedure Rules (**Annex D**); and
  - c) Financial Regulations (**Annex E**).

- 1.3 That in respect of the Council's Protocol on Councillor-Officer Relations:
- a) Appendix A (The Code of Recommended Practice on Local Authority Publicity) be removed, on account of the fact it is guidance published by the Secretary of State and accessible online; and
  - b) Revised Appendix C (Councillors' Access to Information – A Hierarchy of Rights) (**Annex F** shown with tracked changes), be agreed and moved to become an Appendix to the Council's Access to Information Procedure Rules.
- 1.4 That fully revised Contract Procedure Rules (**Annex G**), be agreed.
- 1.5 That the changes to Planning Committee documents, endorsed by the Committee on 7 September (shown with tracked changes), be agreed:
- a) Officer Scheme of Delegation for Development Management Matters (**Annex H**); and
  - b) Procedure for Public Participation at Planning Committee (**Annex I**).
- 1.6 That authority be delegated to the Director – Law and Governance (in consultation with the Leaders of Political Groups) to make minor and consequential amendments to the following documents:
- a) Responsibility for Functions;
  - b) Officer Employment Procedure Rule; and
  - c) Statutory officers and Proper officer Functions

## 2. Background

- 2.1 It is considered good practice to keep constitutional documents under review and undertake a full review every 4-6 years. Since the 2018-19 review, various updates have been agreed by Council:
- a) minor amendments to Council Procedure Rules to reflect clarified notice periods for public questions at meetings ([February 2020](#));
  - b) adoption of Social Media Guidance for Councillors ([March 2021](#));
  - c) minor updates to Financial Regulations ([January 2022](#));
  - d) adoption of a fully reviewed Scheme of Allowances and Parental Leave Policy for Councillors ([January 2022](#));
  - e) adoption of the Local Government Association Model Code of Conduct for Councillors ([June 2022](#)); and
  - f) revisions to Scrutiny Committee Terms of Reference ([June 2022](#)).
- 2.2 The style and content of the Council's constitution do not require significant changes, having undergone a fundamental review in 2018-19. However, upon completion of this review in early 2024, the order and presentation of documents will be adjusted to group together similar documents for ease of access.
- 2.3 Prior to being brought forward for consideration, Leaders of Political Groups were consulted upon the amendments and changes proposed in this report. More information about each is set out below.

### Introduction, Summary and Explanation / Civic Honours Protocol

- 2.4 There are very minor changes proposed to this document, to reference the award of Freedom of the City and to include reference to a new Civic Honours Protocol. A new draft protocol, formalises current practice for bestowing Alderman status and additionally, sets out the arrangements for the award of Freedom of the City, alongside removal arrangements for both honours.
- 2.5 The protocol has been drafted based on existing local practice and good existing practice elsewhere. If adopted, this protocol would have the same status as the arrangements for nomination of the Deputy Mayor (an associated constitutional document).

### Overview and Scrutiny Procedure Rules

- 2.6 Alongside some minor / consequential changes (for example change of name from Scrutiny Management Committee to Corporate Oversight and Scrutiny Management Committee), it is also proposed to:
- a) Introduce procedural flexibility for the consideration of scrutiny referrals where there is not an available Cabinet meeting within 1 month of a referral.
  - b) Adjust call-in arrangements so that:
    - i) further to any successful mediation a call-in notice is published to confirm any undertakings given by the Cabinet member; and
    - ii) rules prohibit a MKCC Councillor with a Disclosable Pecuniary Interest, Other Registerable Interest, or Non-Registerable Interest in the matter, from calling in a decision. This is because existing rules would have effectively prevented a councillor's participation at a call-in sub-committee meeting.

### Protocol on Councillor-Officer Relationship / Access to Information Procedure Rules

- 2.7 At present there is a degree of duplication in relation to access for information for councillors across the two documents (in particular Appendix C of the Protocol). It is therefore proposed to:
- a) amend and streamline Appendix C (from 5 pages to 3.5 pages) and to move it to an Appendix to the existing and Access to Information Procedure Rules.
  - b) remove Appendix A of the Protocol (The Code of Recommended Practice on Local Authority Publicity) entirely as it runs to 6 pages and as guidance issued by the Secretary of State, is published elsewhere.

### Contract Procedure Rules

- 2.8 Contract Procurement Rules have been completely revised, having not been updated for several years, in which time both the structure within the Council has changed, (the Procurement team no longer being part of LGSS), as well as changes having been made to procurement regulations. The Rules have been simplified, with greater emphasis being put on engagement with the Procurement Team. The Key changes are set out below.

### *Procurement Thresholds*

- 2.9 A review has been undertaken of the threshold levels that procurements must follow. These thresholds are now set in line with external reporting requirements and procurement regulations.

### *Waivers*

- 2.10 The current Contract Procedure Rules enable waivers to be issued to set aside the rules and where used, must be agreed by the Director of Finance and Resources, and then reported to Cabinet each quarter.
- 2.11 The waiver process has been removed from the updated rules and replaced with provision for Directors to use their delegated powers to make decisions outside of the rules in exceptional circumstances. Directors will be fully accountable for any decisions made and an Officer Decision Report must be produced and published in such cases, with the relevant Cabinet Member(s) consulted prior to the decision being made. This process will be consistent with the Council's decision-making rules and fully transparent.
- 2.12 If the Director of Law and Governance or Director of Finance and Resources is not satisfied that appropriate options have been fully considered then this will be recorded in the Officer Decision Report, which will be automatically referred to the Audit Committee by the Chief Internal Auditor.

### *Performance Bonds & Insurance Requirements*

- 2.13 Amendments have been made to clarify the need for performance bonds and insurance requirements. These will now be based on a risk assessment for the specific procurement.

### *Subsidy & Grants*

- 2.14 Changes from State aid to Subsidy Control legislation have been reflected in the Rules. The Council can only grant subsidy where it complies with the requirements of the Subsidy Control Act 2022 and all subsidies paid over £100,000 must be reported in the government's subsidy database.
- 2.15 In light of this, the Rules have been amended so that legal advice is sought where it is proposed to give any form of financial assistance to an organisation whether directly (such as loans or grants), or indirectly (such as sale of land at undervalue or deferred payments to the Council).

### Financial Regulations

- 2.16 Consequential and other minor changes introducing greater focus on compliance are proposed. These include, budget timelines, updated terminology and job titles, amended wording and officer responsibilities for assets, and subsidy control revisions.

## Planning Committee Documents

2.17 Planning Committee considered changes to two documents in September, details of which are set out in detail in the Committee's [covering report](#).

- a) The Scheme of Delegation for Development Management matters has been reviewed to add clarity, update legislative references and for presentational ease. There are no alterations proposed to the scope of the Scheme of Delegation, nor will the changes impact on the type of applications that are referred to Committee/Panel for determination.
- b) The Procedure for Public Participation was also updated to add clarity and makes no changes to the current rights to speak on planning applications.

## 3. Timetable for implementation

3.1 Once agreed by Council, revised constitutional documents will be effective immediately. Further changes will be reported to Council in the new year.

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## Annexes

Annex A Overview and timescales for changes to the Constitution

Annex B Draft Civic Honours Protocol

Annex C Introduction, Summary and Explanation (with tracked changes)

Annex D Overview and Scrutiny Procedure Rules (with tracked changes)

Annex E Financial Regulations (with tracked changes)

Annex F Councillors' Access to Information – A Hierarchy of Rights (with tracked changes)

Annex G Contract Procedure Rules

Annex H Officer Scheme of Delegation for Development Management Matters (with tracked changes)

Annex I Procedure for Public Participation at Planning (with tracked changes)

## Background papers

None.