

Report of:	Monitoring Officer
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Portfolio Leader:	Leader of the Council
Report Track:	Council: 27/04/22

Council
27 April 2022
Constitution Amendments

1 Purpose of Report

- 1.1 To present to Council for consideration proposed amendments to the Constitution.

2 Recommendation(s)

- 2.1 That the proposed amendments to the Constitution, as detailed in Appendix 1, be approved.

3 Key Issues and Reasons for Recommendations

Key Issues

- 3.1 Under section 12 of the Constitution (Review and Revision of the Constitution), the Monitoring Officer, in conjunction with the Constitution Working Group, is required to monitor and review the Constitution on an annual basis.
- 3.2 The Constitution Working Group met on 7 February, 7 March, and 11 April 2022 to undertake its latest review. The amendments considered and agreed by the Working Group are outlined in paragraph 5.2, below.

Reasons for Recommendations

- 3.3 To ensure the Constitution remains up to date, Council is recommended to approve the proposed amendments detailed in Appendix 1 of this report.

4 Relationship to Corporate Priorities

- 4.1 The Constitution provides for the proper governance of the Council and cuts across all priorities.

5 Report Detail

- 5.1 The process for reviewing the Constitution on an annual basis was adopted as part of the review undertaken in 2015 to ensure that it remained up to date and allowed for amendments to be made in a timely manner if the need was identified during the year.
- 5.2 The latest review undertaken by the Monitoring Officer, in conjunction with the Constitution Working Group, considered several proposed amendments to the Constitution, along with the reasons for why the amendments had been put forward. The proposals are detailed at Appendix 1, and the required changes to the Constitution detailed in Appendix 2.
- 5.3 The Working Group also discussed whether gender-neutral language should be adopted for the Constitution. All Members views were sought on this proposal and based on feedback received, the Group were of the view that the proposal should be put to full Council for consideration. Appendix 3 sets out a full list of required changes in the Constitution if approved by Council.
- 5.4 Any updates to the Scheme of Delegations approved by Cabinet or Council since May 2021 will also be inserted into the Constitution as part of this update.

6 Implications**6.1 Financial**

None.

6.2 Legal

Keeping the Constitution under regular review ensures that it complies with any relevant legal requirements currently in force.

6.3 Human Resources

None.

6.4 Risk Management

None.

6.5 Equality & Diversity

None.

6.6 Climate Change

None.

7 Appendices to the Report

Appendix 1: List of proposed changes to the Constitution.

Appendix 2: Tracked changes amendments to the Constitution.

Appendix 3: List of gender references in the Constitution.

Proposed Amendments for Review by Constitution Working Group

Part / Section to be Reviewed	Pages and Paragraphs to be Reviewed	Proposed Wording to be Inserted / Deleted / Amended	Reasons for Requesting Review
Part 3, Section 18 - Licensing and Public Protection Committee Terms of Reference	Page 3-18-2 Paragraph 18.8	Remove all references in sub-paragraphs (a) to (c) of 'gambling legislation' and replace with 'Gambling Act 2005' Sub-paragraph (d) - deleted 'gambling legislation' and replace with '**Section 154(1) of the Gambling Act 2005.' Insert the following wording after the first bracketed paragraph: '(**Section 154(1) of the Gambling Act 2005 states that - "The functions under this Part of a licensing authority in England and Wales are by virtue of this subsection delegated to the licensing committee of the authority established under section 6 of the Licensing Act 2003.")'	To ensure the correct legislative references are included in the Committee's terms of reference.
Part 3, Section 19 - Licensing Sub-Committee Terms of Reference	Page 3-19-1 Paragraph 19.1	At the end of the paragraph, insert: 'and Section 154(1) of the Gambling Act 2005.'	To ensure the correct legislative references are included in the Sub-Committee's terms of reference.
	Pages 3-19-1 to 3-19-2 Paragraphs 19.6 and 19.10	At the end of the paragraphs, insert: 'and the Gambling Act 2005.'	To ensure the correct legislative references are included in the Sub-Committee's terms of reference.
Part 3, Section 21 - Audit & Governance Committee Terms of Reference	Pages 3-21-2 to 3-21-3 Paragraph 21.8	Under 'Regulatory Framework' add the following at the end of the bullet point list:	To reflect a recommendation made by the Investigatory

Part / Section to be Reviewed	Pages and Paragraphs to be Reviewed	Proposed Wording to be Inserted / Deleted / Amended	Reasons for Requesting Review
		<ul style="list-style-type: none"> • ‘Consider the Council’s annual Regulation of Investigatory Powers report.’ 	Powers Commissioner following a 2018 inspection.
Part 3, Section 23 - Appointments Panel Terms of Reference	Page 3-23-1 Paragraphs 23.5 and 23.6	After ‘Managing Director’, insert: ‘or Monitoring Officer.’	To ensure compliance with the JNC terms of service for Chief Executives.
	Page 3-23-1 Paragraph 23.7	At the end of the first line, insert: ‘, unless the matters discussed relate to the Managing Director’s employment, in which case it shall be clerked by the Monitoring Officer.’	
	Page 3-23-1 Paragraph 23.8	After the first sentence, insert: ‘To consider allegations relating to the conduct, capability or breakdown of trust of the Chief Executive, the Section 151 Officer, and the Monitoring Officer.’	
	Page 3-23-2 Paragraph 23.9	<p>Create a sub-paragraph (a), and insert new sub-paragraphs (b) and (c):</p> <p>(b) ‘To consider allegations relating to the conduct, capability or breakdown of trust of the Chief Executive, the Section 151 Officer, and the Monitoring Officer, and to take action in accordance with the Council’s approved disciplinary procedure for these officers, including suspension, appointment of an Independent Investigator, and disciplinary action short of dismissal.’</p> <p>(c) ‘suspend those employees in the posts of Head of Paid Service, Monitoring Officer and/or Section 151 Officer, whilst an</p>	

Part / Section to be Reviewed	Pages and Paragraphs to be Reviewed	Proposed Wording to be Inserted / Deleted / Amended	Reasons for Requesting Review
		investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. The suspension periods may only be extended beyond two months following a decision by the Appointments Panel.'	
Part 3, Section 26 - Scheme of Delegations	Page 3-26-13 Paragraph 26.5.20(c)(i)	Amend wording to read: 'set out the specific clear and relevant material planning reasons for why the request is being made for the Planning Application to be referred to the Planning Control Committee for determination.'	To reflect best practice as per recommendations made by the Planning Advisory Service following a review of the Development Control Service in 2019.
	Page 3-26-21 Paragraph 26-10-2	Insert new sub-paragraph (e): 'Appoint persons to serve on the Council's Independent Remuneration Panel in accordance with the provisions of the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended).'	To formally reflect existing practice in the Constitution.
	Page 3-26-22 Paragraph 1.7 / Page 3-26-25	Delete all wording in paragraph 1.7 and insert new paragraph 4.2 to read: 'Subject to the Terms of Reference, the Appointments Panel may suspend the Head of Paid Service (the Managing Director), Monitoring Officer or Section 151 Officer, in accordance with their relevant terms and conditions of employment, whilst an investigation takes place into alleged misconduct.	To ensure compliance with the JNC terms of service for Chief Executives.

Part / Section to be Reviewed	Pages and Paragraphs to be Reviewed	Proposed Wording to be Inserted / Deleted / Amended	Reasons for Requesting Review
		Such suspension must be on full pay and last no longer than two months. The suspension periods may only be extended beyond two months following a decision by the Appointments Panel.'	
Part 4, Section 27 - Council Procedure Rules	Page 4-27-3 Paragraph 4A.(1)	Re-order sub-paragraphs (l) to (m)	To correctly reflect the order in which political balance, committee appointments, and Chairmen and Vice-Chairmen of Committees are confirmed at the Annual Council Meeting.
Part 5, Section 39 - Local Protocol for Planning Decision Making	Page 5-39-10 Paragraph 7.4(B)(6)(i)	Amend wording to read: 'set out the specific clear and relevant material planning reasons for why the request is being made for the Planning Application to be referred to the Planning Control Committee for determination.'	To reflect best practice as per recommendations made by the Planning Advisory Service following a review of the Development Control Service in 2019.
Throughout	Throughout	Gender specific terminology changed to gender neutral terminology	To adopt gender neutral language where appropriate

Tracked Changes Amendments to the Constitution

Section 18 Licensing and Public Protection Committee

18.8 Functions

To carry out the following functions in accordance with the Codes of Conduct:

- (a) Determine applications for the grant or renewal of licences, other than those submitted under the Licensing Act 2003 and ~~gambling legislation~~ the **Gambling Act 2005** where:
 - (i) adverse comments have been received in the processing of the application, and
 - (ii) Officers with delegated authority have indicated that there are circumstances which may warrant a refusal of the application.
- (b) Determine any issues relating to revocation, suspension or variation of licences, other than those submitted under the Licensing Act 2003 and ~~gambling legislation~~ the **Gambling Act 2005**.
- (c) Consider all issues relating to Public Protection encompassing all Environmental Health matters (other than matters relating to the Licensing Act 2003 and ~~gambling legislation~~ the **Gambling Act 2005**) not delegated to Officers and required to be made by the Council.
- (d) Those functions required to be carried out by a licensing committee pursuant to Section 7* of the Licensing Act 2003 and ~~gambling legislation~~ ****Section 154(1) of the Gambling Act 2005** and for those functions the Committee shall be the Council's Licensing Committee.

*(Section 7 of the Licensing Act 2003 states that – “All matters relating to the discharge by a licensing authority of its licensing functions are, by virtue of the subsections of the Act, referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority.”)

(Section 154(1) of the Gambling Act 2005 states that - “The functions under this Part of a licensing authority in England and Wales are by virtue of this subsection delegated to the licensing committee of the authority established under section 6 of the Licensing Act 2003.”)**

(Note: The Committee may arrange for the determination of applications for the grant or renewal of licenses submitted under the Licensing Act 2003 to be determined by either licensing committee/or sub-committees/ or an Officer of the Council.)

19.1 Status

The Licensing Sub-Committees are Sub-Committees of the Licensing and Public Protection Committee established to discharge the Licensing Authority's licensing functions under Section 7(1) of the Licensing Act 2003 and Section 154(1) of the Gambling Act 2005.

19.6 Frequency of Meetings

Meetings of the Committee will be convened in accordance with the requirements of the Licensing Act 2003 and the Gambling Act 2005.

19.10 Functions

Pursuant to Section 10(1) of the Licensing Act 2003, the Licensing and Public Protection Committee delegates to the Licensing Sub-Committee all of its functions under the Licensing Act 2003 and the Gambling Act 2005.

Section 21
Audit & Governance
Committee

21.8 Core Functions

Regulatory Framework

- Consider the Council's annual Regulation of Investigatory Powers report.

Section 23
Appointments Panel

23.5 Frequency of Meetings

Meetings of the Appointments Panel will be convened by the Managing Director, or the Monitoring Officer, as required.

23.6 Agenda

Prior to the meeting of the Panel, the Managing Director, or the Monitoring Officer, will circulate to all Members of the Panel the Agenda and Reports to be considered.

23.7 Proceedings

The Managing Director (or nominee) shall be the Clerk to the Committee, unless the matters discussed relate to the Managing Director's employment, in which case it shall be clerked by the Monitoring Officer.

23.8 Functions

The Appointments Panel will deal with the appointment of Officers to posts at Head of Service level within the Authority, with the exception of the S.151 Officer and the Monitoring Officer.

To consider allegations relating to the conduct, capability or breakdown of trust of the Chief Executive, the Section 151 Officer, and the Monitoring Officer.

23.9 Delegated Powers

- (a) The Panel has delegated authority to appoint to a Head of Service level vacancy subject to complying with the Procedural Requirements set out in paragraph 6.1 of Annex 1 to the Scheme of Delegation.
- (b) To consider allegations relating to the conduct, capability or breakdown of trust of the Chief Executive, the Section 151 Officer, and the Monitoring Officer, and to take action in accordance with the Council's approved disciplinary procedure for these officers, including suspension, appointment of an Independent Investigator, and disciplinary action short of dismissal.
- (c) Suspend those employees in the posts of Head of Paid Service, Monitoring Officer and/or Section 151 Officer, whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. The suspension periods may only be extended beyond two months following a decision by the Appointments Panel.

Section 26 Scheme of Delegations

26.5 Head of Economic Prosperity

Planning

26.5.20 The following matters shall be reported to the Planning Control Committee for determination:-

- (c) All Planning Applications where a Member of the Council has made a formal written request (using the necessary referral form available from the Council's Planning Service), which must:
 - (i) Set out ~~the specific~~ clear and relevant material planning reasons for why the request is being made for the Planning Application to be referred to the Planning Control Committee for determination.

26.10 Monitoring Officer

20.10.2 The person appointed by the Council as Monitoring Officer, in addition to undertaking the statutory functions of the post as listed in the Monitoring Officer Protocol shall:

- (e) Appoint persons to serve on the Council's Independent Remuneration Panel in accordance with the provisions of the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended).

Annex 1

Council - Disciplinary Action

1.7 ~~Subject to the Terms of Reference, Council may suspend the Head of Paid Service (the Managing Director), Monitoring Officer or Section 151 Officer, in accordance with their relevant terms and conditions of employment, whilst an investigation takes place into alleged misconduct. Such suspension must be on full pay and last no longer than two months.~~

Appointments Panel

4.2 ~~'Subject to the Terms of Reference, the Appointments Panel may suspend the Head of Paid Service (the Managing Director), Monitoring Officer or Section 151 Officer, in accordance with their relevant terms and conditions of employment, whilst an investigation takes place into alleged misconduct.~~

~~Such suspension must be on full pay and last no longer than two months. The suspension periods may only be extended beyond two months following a decision by the Appointments Panel.'~~

Section 27 Council Procedure Rules

4A. Order of Business - Annual Meeting

(1) In a year when there is an ordinary election of Councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the Annual meeting will take place in March, April or May:

- (l) ~~To decide the allocation of seats to political groups in accordance with the current legislation.~~
 - (m) ~~To appoint to Committees those Councillors named by the Group Leader.~~
 - (n) ~~To appoint the Chairman and Vice-Chairman of Committees provided that advance notification of any Political Group's proposed Chairman, Vice-Chairman and membership has been circulated by the Proper Officer to all Members at least 24 hours prior to the Annual Meeting.~~
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7. Decision Making Procedures

7.4 **Decisions on planning and other applications** submitted under the Town & Country Planning Acts including applications for listed building consent, conservation area consent, consent to display an advertisement, certificates of lawful use or development and prior notification of agricultural, telecommunication development and demolitions (referred to and defined as Planning Applications under paragraph 7.4(A)(1) below) are made by one of the following two methods:-

(B) Council's Planning Control Committee

(6) Where a Member of the Council seeks to invoke and rely upon clause 4 sub-paragraph (f) then:

- (a) the Member shall be afforded the opportunity to have an informal site visit with the appropriate case officer to determine whether it should be recommended to the Planning Control Committee that a formal site visit be undertaken; and then shall
- (b) proceed to making a written request (using the necessary referral form available from the Council's Planning Service), which must:
 - (i) set out ~~the specific clear and relevant material planning~~ reasons for why the request is being made for the Planning Application to be referred to the Planning Control Committee for determination.

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Gender References in the Constitution

Chairman / Vice-Chairman and Chairmen / Vice-Chairmen					
Part & (Section)	Page	No. of references	Part & (Section)	Page	No. of references
Index	1	1	4 (28)	4-28-4	3
2 (5)	2-5-1	14		4-28-5	1
2 (12)	2-12-1	1		4-28-6	6
3 (16)	3-16-1	5	4 (29)	4-29-3	3
	3-16-2	2	4 (30)	4-30-2	1
	3-16-3	2	4 (31)	4-31-1	2
3 (17)	3-17-1	4		4-31-3	5
3 (18)	3-18-1	4		4-31-4	1
3 (19)	3-19-1	3	5 (35)	425	1
3 (20)	3-20-1	4		428	2
3 (21)	3-21-1	5	5 (36)	441	2
3 (22)	3-22-1	3		443	2
	3-22-2	1	5 (37)	459(vi)	3
3 (23)	3-23-1	3		459 (viii)	2
3 (24)	3-24-1	5	5 (39)	5-39-10	2
	3-24-2	1		5-39-11	2
3 (25)	3-25-2	2		5-39-15	2
				5-39-16	2
4 (27)	4-27-1	11	5 (40)	5-40-1	2
	4-27-2	15		5-40-2	4
	4-27-3	8		5 (41)	5-41-1
	4-27-4	4	5-41-2		1
	4-27-5	1	6 (42)	6-42-6	8
	4-27-6	4		6-42-8	3
	4-27-7	4		6-42-9	2
	4-27-8	3			
	4-27-9	4			
	4-27-10	4			
4-27-11	1				
4-27-13	5				
4-27-14	12				
				TOTAL	217

Part & (Section)	Page	No. of references	Part & (Section)	Page	No. of references
	4-27-15	5			
	4-27-16	7			
	4-27-18	1			
	4-27-19	3			
	4-27-21	2			

He / She					
Part & (Section)	Page	No. of references	Part & (Section)	Page	No. of references
2 (5)	2-5-1	1	4 (28)	4-28-7	1
2 (6)	2-6-1	5	4 (30)	4-30-2	3
	2-6-2	10	4 (31)	4-31-1	2
2 (7)	2-7-1	1	4 (32)	4-32-1	1
	2-7-2	6		4-32-2	1
2 (9)	2-9-2	2		4-32-5	1
2 (11)	2-11-1	2		4-32-17	1
3 (13)	3-13-3	1		4-32-23	1
3 (15)	3-15-2	1		5 (35)	419
3 (17)	3-17-2	1	431		6
3 (22)	3-22-1	1	5 (36)	440	1
	3-22-2	1		442	2
3 (25)	3-25-1	1		445	2
4 (27)	4-27-1	1		446	2
				447	3
				452	1
			454	2	
			6 (42)	6-42-4	2
				6-42-5	2
	4-27-7	1			
	4-27-10	2	5 (38)		
	4-27-11	2			
	4-27-12	1	6 (42)		
	4-27-13	5			
	4-27-14	1			
				TOTAL	81