

COUNCIL

Digital Constitution 2019

10 April 2019

Report of the Constitution Working Group

PURPOSE OF REPORT

To provide a final draft of a new digital Constitution, for consideration by Council.

Whilst the report itself is public, Appendix A of the report is exempt from publication by virtue of By virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

RECOMMENDATIONS

- (1) That Council considers the legal advice (Appendix A) regarding Members' Access to Information, and how this fits with resolution (1) c) made at the last Council meeting (see paragraph 2.0 of the report).
- (2) That Council considers a new method of calculating Political Balance, set out in Appendix B of the report.
- (3) That Council considers the draft of the new digital Constitution, revised in line with the resolutions of Council made on 13 March 2019, for approval.
- (4) That the new Constitution, if approved, comes into force on Monday 6 May.
- (5) That Officers be requested to complete formatting and proof-reading the digital document for uploading to the Council's website in time for the commencement date.
- (6) The Monitoring Officer may make minor consequential, editing and grammatical amendments to the text and correct typographical, referencing and consistency errors.

1.0 Introduction

- 1.1 At the last Council meeting on 13 March 2019, minute number 150, Members considered a draft Constitution and resolved that:

- (1) The draft constitution be approved in principle, subject to the following changes:
 - a) Regarding friendly amendments; “That only the proposer and seconder of a motion need to agree about whether the amendment is deemed a friendly amendment.
 - b) Page 83 of the draft constitution, paragraph 15.5; That the words “provided at least 3 days’ notice in writing or by electronic mail from a known and recognised source, of the question has been given to the Chief Executive, and has not been rejected under the grounds stated in rule 12.4” be replaced with “provided the question is clearly related to the Motion on notice and not potentially defamatory, vexatious or offensive.
 - c) Page 124, paragraph 10.7 removal of the words ‘that is open to the public’.
- (2) The draft constitution be converted to the full web based digital format.
- (3) The Constitution Working Group finalise any extant issues to include minor adjustments and potential changes not yet approved by the Working Group.
- (4) The Monitoring Officer be delegated authority to correct and amend any minor typographical, editing or text errors.

1.2 Changes a) to c) have been made to the draft, and it has been converted to a digital format. It should be noted that legal advice has been provided regarding access to information for Members. This is attached at **Appendix A** and explained further in paragraph 2.0 below.

1.3 Members will have received a link, with the agenda, to enable them to look at the content in advance of the meeting. Additionally, there will be a large screen available at the meeting view the digital Constitution.

1.3 The Constitution Working Group met on 27 March 2019 to view the digital version and check that these adjustments had been made along with any other minor corrections.

2.0 Legal Position – Access to Information

2.1 The consultants who have advised the Council during the review have provided an advice note on councillors’ access to information. This was circulated to all Members via email on 20 March and is again provided at Appendix A. This is a legal advice document and exempt from publication.

2.2 There is a particular issue with Council resolution (1) c) above, minute number 150, as this allows Members to attend meetings where information is discussed which they may not have a lawful right to access:-

A member of the Council may attend any part of a meeting ~~that is open to the public~~ except where the Councillor seeking to attend has a disclosable pecuniary interest or another interest within paragraph 12(1) of Part B of their Councillors Code of Conduct, in item of business.

2.3 This does not require the Councillor to demonstrate any ‘need to know’ the information. It does not match the additional rights of access for councillors set out in Part 3, Section 4 paragraph 19.04 which sets out the common law right of access to particular information necessary for the performance of a Councillor’s duties. When such information is not public, a Councillor may be required to demonstrate why access to the information is required, known as demonstrating their ‘need to know’.

2.4 If a Councillor needs to know the information they would be entitled to it in any event. Therefore, the only effect of this amendment is to give Councillors access to information by way of attendance at meetings to information that they do not need to know to carry out their role as Councillor.

2.5 This purports to give access to meetings where confidential, exempt and personal information is discussed. The risk attached to this is set out in appendix A.

3.0 Extent of the Review

3.1 Whilst the bulk of the Constitution has been reviewed, there are two significant parts, Financial Procedure Rules and Contract Procedure Rules, that are still to be re-drafted, and these will be done after the elections. Both Codes of Conduct (Councillors and Officers) are also due to be re-drafted.

4.0 Political Balance Calculation Method

4.1 Appendix B sets out the Working Group's proposals for calculating political balance for committee places. It should be noted that a separate vote will be required on this proposal, since approval of a local calculation requires a unanimous vote in favour, not just a simple majority.

5.0 Conclusion

5.1 Council is asked to consider the Working Group's final draft of the Constitution for approval.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):

The constitution is one of a series of mechanisms that govern the relationship of the corporate body of the City Council to its members and citizens. It must balance the legislative and human rights obligations.

Gender neutrality in language has also been adopted.

RELATIONSHIP TO POLICY FRAMEWORK

The Policy Framework for the review was set by Full Council on 26 September 2018.

LEGAL IMPLICATIONS

The final draft has been checked for statutory compliance. There is an issue which has been highlighted in paragraph 2 of the report.

FINANCIAL IMPLICATIONS

None directly arising from this report.

OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces

None.

SECTION 151 OFFICER'S COMMENTS

The constitution review significantly increases the delegated value of decisions. Council must be satisfied on the balance of transparency, accountability and scrutiny with the need to make timely and robust decisions.

MONITORING OFFICER'S COMMENTS

The draft constitution reflects the requirements of primary and secondary legislation. The Chamber must remember this is a 'living document' and should be regularly reviewed for effectiveness and usability.

It is inevitable, as the Constitution is used, that errors will be identified and will require correction and provision should be made to allow for easy rectification of unintended outcomes.

The Local Government and Housing Act 1989 S.5 2 (a) requires that where a contravention by the council, of any enactment or rule of law or of any code of practice made or approved by or under any enactment to prepare a report to the authority with respect to that proposal, decision or omission.

The chamber is asked to give careful consideration to the legal advice in Appendix A.

BACKGROUND PAPERS

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