

CONSTITUTION REVIEW

REPORT OF: DIRECTOR OF RESOURCES AND ORGANISATIONAL DEVELOPMENT
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Wards Affected: All
Key Decision: No
Report to: Council
29 March 2023

Purpose of Report

1. This report recommends to Council updates to the Constitution following a detailed, cross party working group review.

Summary

2. A cross party group carried out a thorough examination and review of the constitution, building on the work initiated by the governance review led by Sandra Prail in 2021. This phase one review, which also convened a cross party group, was approved in September 2021 by Council and proposed the work be continued with a second phase. This paper sets out for approval the conclusions of that second phase.
3. The working group was informed by receiving benchmarking data from similar councils on their approach to statutory meetings, whilst also seeking updated legal and financial advice, and consideration of best practice across a number of areas in the constitution.
4. Through a series of meetings and document reviews the working group now recommends changes as attached in the revised constitution included at Appendix A. For ease, the appended constitution presents the changes in full within the document, and this paper describes those changes under key headings. A document with tracked changes is available on request.

Recommendations

5. **Council is recommended to adopt the updated Constitution (Appendix A) noting the changes outlined in paragraphs 9 to 28 below.**
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Background

6. In December 2022 a cross party working group was convened to carry out the annual review of the Constitution. Councillors sought advice from officers, including utilising an external perspective bought by an interim Monitoring Officer, to take a full review across the entire constitution and appendices.
7. This review also built on the work carried out by Sandra Prail which was presented to Council in September 2021, which gave significant thought to the structure and quantity of meetings and how the Council's approach might lead to more efficient and effective decision making.

8. This significant review also considered all relevant organisational and legislative changes and took the opportunity to update and format the document for ease of use. All changes are described below, grouped by into relevant areas.

Structure and Number of Meetings and Associated Articles

9. Members extensively debated the structure and quantity of the council's statutory meetings. This led to the recommendations as set out in the proposed constitution at Appendix A. These include moving to two scrutiny committees and rationalising the number of statutory meetings across Council, Cabinet and other committees. This recommendation took into account benchmarking of similar councils, and members noted that, despite recommending some substantive changes, MSDC will remain an outlier in the number of meetings held. It should be noted that a further paper to be considered at the same Council meeting sets out these meetings as a programme across the coming municipal year which enables members to see in this approach to statutory meetings in practice.
10. Significant debate was held in relation to the size of scrutiny committees and much discussion was given to membership numbers, with the working group settling on 11 members. Members noted that the vice chair should be an active participant and asked that officers ensured that new councillor induction included the role of the chair and vice chair. Members of the group reiterated an aim that by having a new approach to scrutiny the ambition was for more in depth and detailed scrutiny of issues, enabled by focusing time and resource into fewer meetings. To aid this, councillors also agreed that reports should always focus on debating issues and making recommendations, and thus reports for noting should be dealt with through different modes of communication.
11. The role and function of the Audit Committee has been updated to remove reference to the Audit Commission and update with the appropriate current external audit arrangements. In addition, the role of the committee has been explicitly clarified to include being responsible for ensuring effective scrutiny of the treasury management strategy and policies, including the capital strategy. This is a function which this committee already carries out, but this is now explicitly stated in the constitution.
12. A reference to any scrutiny budget has been removed. In the unlikely event that the scrutiny committee attracts an additional external cost (for example needing an expert witness), the costs for this would be funded by the council service bringing the matter to scrutiny.

Leader, Cabinet and Key Decisions

13. To add clarity, the process for appointing Cabinet and the Deputy Leader has been updated and made consistent throughout. In addition, the phrase Executive Leader has been added throughout.
14. The description of what constitutes a key decision has been moved to a more prominent position in the document and is set out alongside the first mention of decision making in the constitution. Currently, this information is set out in the access to information section and this move gives greater prominence and clarity to what constitutes such a decision.

Council Tax

15. Two clauses have been added as specified in legislation. These formalise the practice of a recorded vote in relation to changes to Council Tax and confirm the ineligibility of Councillors to participate in such a vote if their own Council Tax is in areas.
16. The Council Tax base (as opposed to Council Tax levels) is delegated as an officer function and removed from the Constitution. This is because setting the base is a proscribed process which cannot be amended or disregarded by council. The tax base will be promptly shared with Councillors, Towns and Parishes in December each year.

Constitution Update – General Matters

17. Throughout the document all job titles and roles have been updated to reflect the recent senior management restructure. The Constitution also contains, at appendix 7, an updated organisational chart and Councillors are encouraged to contact Directors and Assistant Directors as their main point of reference.
18. All references to legislation have been checked and updated. One consequence of this is the introduction of a section called 'local choice' in part 3, which is a table the council is required to include. The information in the table reflects our current practice and this addition is simply to document it in our constitution in line with our obligations. In addition, across the constitution dates and names of specific acts and legislation have been updated and defunct acts have been removed.
19. Some small changes have also been included to reflect modern practices, for example removing references to faxes and confirming that 'in writing' includes email. Notices previously made on paper may also now be made online and language has been updated to reflect this. In addition, the wording has been clarified to specify that all contracts the Council enters into will be in writing. Again, this is a matter where our current practice is being documented as opposed to a change in council approach.
20. Throughout the document has been updated to tidy grammar, numbering, referencing and to take a consistent style to capitalisation, titles etc.

Scheme of Delegation and Procedure Rules

21. Across the financial procedure rules, the scheme of delegation and other areas such as write-offs thresholds have been raised in line with advice from the S151 Officer. These thresholds have not been updated in many years and the revisions take into account value changes and the intent of the individual procedure rules to enable the implementation of decisions and provide for the delivery of the Budget and Policy Framework. In general, the principles enable Chief Officers to make financial arrangements up to £200k and Assistant Directors up to 50k with some lower levels for entering into rental agreements (£50k), write-offs (£25k) and acquisitions and disposals (£100k). It should be reiterated that these delegations apply within the appropriate budget and procedural frameworks or where permitted by specific decisions.

22. In addition, the current constitution contains a Procurement Code which mostly relates to procedural instructions for officers. This is replaced by Contract Procedure Rules in line with the approach usually taken constitutionally. Therefore, these procedure rules now relate specifically to the role of Councillors in the procurement process. Taking this approach also enables officers to implement the expected changes in procurement legislation later in 2023.
23. The section on Proper Officers has been updated to present this more clearly in a table form and to present the roles and responsibilities as they are held by the new Assistant Director roles. In practice and intent, this represents the same overall approach and levels of delegation that is currently in place.
24. In addition, the employment procedure rules have been expanded to explicitly match the national terms and conditions which must be in place to match employment and contractual terms. This reflects that which was already enabled in our Constitution but is clear and specific about the procedural approach to be taken.
25. The role of questions at Council is vital and to ensure that a fully detailed response can be prepared the deadline for presenting questions has been moved back 24 hours. This relates to questions from councillors and members of the public. The new deadline will be 1 pm Monday for a Wednesday Council meeting.

Appendices and Other Protocols

26. The section on virtual meeting rules has been removed as these are no longer permitted following the expiry of the specific pandemic-related legislation.
27. A dispensations protocol has been added. The council is responsible for determining requests for a dispensation by a Member under s.33 of the Localism Act 2011 and this is included in section 5. In certain circumstances, Members may be granted a dispensation that enables them to take part in council business where this would otherwise be prohibited because they have a Disclosable Pecuniary Interest. Provided Members act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law. This new protocol sets out where this might be appropriate and how it would be enacted.
28. The Sustainability and Climate Change Advisory Panel terms of reference has been removed following the successful work to develop and agree the Sustainable Economic Strategy and Action Plan.

Concluding Comments

29. Officers would like to reiterate their thanks to all those Councillors from across the parties who participated in a comprehensive and lively debate, which has led to a detailed review and update of the Constitution.

Other Options Considered

30. None

Financial Implications

31. None

Risk Management Implications

32. None, as this document presents refreshed and updated legal and financial advice to ensure the Constitution is comprehensively reviewed and refreshed.

Equality and Customer Service Implications

33. None, as the Constitution takes account of all relevant legislation pertaining to access to information and participation in decision-making.

Sustainability Implications

34. None

Appendices

- Appendix A - Constitution

Background Papers

- [Existing Constitution](#)