

Report to COUNCIL

Constitutional Amendments

Officer Contact: Liz Drogan, Head of Democratic Services, Mark Hardman, Constitutional Officer

8th January 2020

Reason for Decision

This refresh of the Council Constitution has been undertaken with two principal objectives in mind. Firstly, to ensure that all legislative and procedural references are current and up to date, including cross referencing to detailed procedures from more descriptive content and, secondly, to look to simplify, so far as possible, what will always be a complex procedural document to aid both understanding and application to practical circumstances.

The Council's Constitution is based around guidance and a suggested model proposed in conjunction with the Local Government Act 2000. While the Council's procedures and principal references within the Constitution have been updated over time, the piecemeal nature of the legislative developments have likewise been reflected in the piecemeal amending of the Constitution. Amendments over time have been made to deliver the immediate implication of the legislation. As a result, content might not 'flow', cross referencing might not be complete, and incidental changes might not always be appreciated. This Review seeks to bring coherence to these piecemeal amendments and to ensure that incidental and cross references are incorporated in full.

Recommendations

1. That Full Council agree the suggestions amendments as detailed at Appendices 1-6.
2. That any further consequential amendments arising from the suggested amendments are delegated to the Director of Legal.

Constitutional Amendments

1 Background

- 1.1 Given the original Council Constitution was derived from guidance and a draft without practical experience of the current governance style, together with the subsequent piecemeal development of the Constitution, means that the Constitution may not be presented to best effect. While a full narrative flow that would aid understanding is perhaps not attainable, not least given the complexity of certain procedures and the reliance on the Constitution in law, efforts have been taken to simplify presentation and, where possible, to make the content more focused.

2 Current Position

- 2.1 It should be stressed that this review has been a 'refresh' exercise and focused on updating and refining content, not revising procedural arrangements. As such, while content might have been redrafted or relocated, there should be nothing 'new' in terms of procedural arrangements. Where potentially contradictory content has been found, this has been considered against the law, current procedural arrangements and a consideration of the intent of the Constitution. Efforts have also been made to enhance cross referencing to aid use of the Constitution in practical circumstances.

To avoid repetition below, several themes/circumstances have been addressed in various Parts of this Constitution refresh –

- procedural arrangements for the executive and the Council are now better aligned than were suggested by the 2000 Act guidance and model Constitution and previously separate content has now been consolidated;
- current content refers to 'the Cabinet' when sometimes meaning 'the executive' in its wider sense. This reflected the immediate post 2000 Act implementation which saw the Cabinet as the only form of the executive. The subsequent establishment of Cabinet Committees and delegation to individual Members means the use of the term 'Cabinet' is inappropriate when talking about the wider executive; and
- the establishment of the 'strong leader' model meant that certain former Council functions passed to the Leader and the review has picked up and redrafted a number of consequential amendments.

Outside of the above, highlights of the review exercise are as follows -

Part 1 Summary and Explanation

This Part of the Constitution is intended to provide a basic welcome and introduction to the Constitution and, as such, proposed amendments/redrafts in this Part are intended to make simpler statements, leaving more technical statements to other parts of the Constitution.

Opportunity has been taken to revisit the section on 'the Council's staff', widening the scope of the current content, which appeared to relate only to managerial or senior officers, to make it inclusive of all staff. Amendments under the Citizen's Rights section rationalise the common rights of access to Council and executive meetings and documentation and also now include the recent rights of advance notice of private executive business and to record meetings.

Part 2 Articles

This part of the Constitution can be regarded as a series of statements or descriptions about various aspects of the Council and serves to signpost readers to more detailed and procedural content. It is suggested that Articles should be brief and, in the main, not include detailed procedural content. Principal refreshed areas in this part are

- Article 6, Overview and Scrutiny – detailed terms of reference moved to Part 3 in common with other Committees;
- Article 7, The Executive – redrafted Article, moving much content to Executive Procedure Rules;
- Article 9, The Standards Framework – redrafted Article reflecting the importance of standards and conduct of both Members and Officers;
- Article 11, Working in Partnership – redrafted Article reflecting commitment to partnership/co-operative working;
- Article 18, Health – Article deleted as content/signposting is reflected elsewhere in the Articles.

Part 4A Council Procedure Rules

Amendment to this Part is largely concerned with consolidating content and re-ordering provisions, so far as is possible, in the order in which they might arise in the conduct of a meeting.

Part 4B Access to Information Procedure Rules

Amendments are largely concerned with reflecting, as appropriate, aligned of Council and executive procedures, confirming some current access to information and executive arrangements, and consolidating key decision content.

Part 4C Budget and Policy Framework Procedure Rules

Amendments are largely concerned with consolidating content.

Part 4D Executive Procedure Rules

Amendments are largely concerned with consolidating content taken from Article 7 and ensuring that the procedural arrangements for all forms of executive delegation are reflected.

Taken as a whole, the proposed amendments to the above parts of the Constitution may appear extensive. However, some of the proposed revisions are relatively minor, for example re-ordering content to aid accessibility and understanding. Where more detailed amendments are proposed, it is important that the Constitution reflects both current legislative requirements and procedural practice.

3 Options/Alternatives

- 3.1 Option 1 – To agree the suggested refresh and amendments to the Constitution.
Option 2 – Not to agree the suggested refresh and amendments to the Constitution.

4 Preferred Option

- 4.1 Option 1 is the preferred option to ensure coherence to previous piecemeal amendments and to ensure that incidental and cross references are incorporated in full.

5 **Consultation**

5.1 The Constitutional Working Group recommended the suggested changes to Full Council.

6 **Legal Services Comments**

6.1 Legal comments are provided in the body of the report.

7 **Background Papers**

7.1 Oldham Council Constitution

8. **Appendices**

- 8.1 Appendix 1 – Part 1 Summary and Explanation
Appendix 2 – Part 2 Articles of the Constitution
Appendix 3 – Part 4 A Council Procedure Rules
Appendix 4 – Part 4 B Access to Information Rules
Appendix 5 – Part 4 C Budget and Policy Framework
Appendix 6 – Part 4 D Executive Procedure Rules