

## Report to COUNCIL

# Constitutional Amendments

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

**24<sup>th</sup> March 2021**

---

### Reason for Decision

A 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 from descriptive content to more detailed procedures and, secondly, to look to simplify content so far as is possible in what will always be a complex procedural document in order to aid both understanding and application to practical circumstances.

This report looks to progress changes to employment-related decision making arrangements that were noted by the Council in June 2020 as having been recommended by the Members' Constitutional Working Group, subject to the submission of further detail; refreshed terms of reference for the Health and Wellbeing Board; and determine a commencement date for the Council's revised Overview and Scrutiny arrangements that were agreed by Council in June 2020.

### Recommendations

1. That Council agree the suggested amendments to Part 3 (Responsibility for Functions) as part of the refresh of the Council's Constitution arising from the review of employment related decision making and the refresh of the Health and Wellbeing Board terms of reference;
2. That the Employment Committee further consider the procedures and arrangements for the operation of the established Sub-Committees of the Committee;
3. That the revised employment related decision making arrangements be reviewed in 12 months time;
4. That the Council's revised employment related decision making arrangements and Overview and Scrutiny arrangements be implemented with effect from the date of Annual Council, 19<sup>th</sup> May 2021;
5. The dates for meetings of the Council's revised Overview and Scrutiny arrangements be as proposed in paragraph 4.2;
6. That any consequential amendments to the Council's Constitution arising from the amendments as presented in this report be delegated to the Director of Legal.

---

## Constitutional Amendments

### 1 Background

- 1.1 A review exercise of the Constitution has been undertaken and has been the subject of significant reports submitted to the Council in January and June 2020.
- 1.2 Within the papers submitted to Council on 15<sup>th</sup> June 2020 it was noted that the Constitutional Working Group had agreed in principle to the establishment of an Employment Committee, an Appointments Committee and an Investigation and Disciplinary Committee and that detailed terms of reference and consequent amendments to the Officer Scheme of Delegation would be submitted to a future meeting of the Council.
- 1.3 It was further noted that the terms of reference of the Health and Wellbeing Board were to be subject to consultation with the Board and be submitted to a future meeting of the Council.
- 1.4 The Council on 15<sup>th</sup> June 2020 agreed Committee terms of reference for a revised Overview and Scrutiny structure, with an implementation date to be agreed.
- 1.5 It should be stressed that the Constitution review generally has been a 'refresh' exercise, focused on updating and refining content rather than revising procedural arrangements. While circumstances drove a more detailed consideration of employment related decision making, this was nonetheless considered against the law and current employment procedural arrangements.

### 2 Employment-related decision making arrangements

- 2.1 The Council's employment decision making arrangements were reviewed in line with statutory requirements. While procedural matters related to the recruitment, appointment and discipline of the Council's senior officers were considered by the Council in June 2020 when approving revised Officer Employment Procedure Rules as part of the Council's Constitution, the related decision making structure was delayed to allow more consideration between Officers in Constitutional Services and Human Resources.
- 2.2 The various governance arrangements with regard to employment decision making needs to be acknowledged, with different parts of the Council responsible for different aspects of decision making –
  - The Council must, by law, adopt the Officer Employment Procedure Rules and the Code of Conduct for Employees (as part of the Constitution), appoint the Head of Paid Service, designate the posts of Head of Paid Service, Chief Finance Officer and Monitoring Officer and be the dismissing body for such posts, consider the statutory reports of those postholders, and receive the Pay Policy Statement;
  - The "Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal)" is a function not to be the responsibility of the executive. This is therefore a Council function that may be undertaken by the Council or, with the exception of the posts specified above, be delegated to a Committee or to Officers, However, it should be noted that the power to appoint and dismiss is further qualified such that the functions of appointing and disciplining staff other than Chief Officers and Deputy Chief Officers is a function of the Head of Paid Service; and

- 
- Remaining functions are executive functions which includes all policy matters in relation to staffing, including consultation arrangements, and in relation to industrial relations within the Council. These may, at the determination of the Leader of the Council, be undertaken by the Cabinet, a Committee of the Cabinet, an individual Cabinet Member or by Officers.
- 2.3 The proposal considered by the Constitutional Working Group and reported to Council in June 2020 would see the disestablishment of the Selection Committee and the establishment of three new Committees.
- 2.3.1 The Employment Committee would
- determine all terms and conditions matters for all Council staff (except Chief Officer related posts).
  - determine all matters related to the Council's Reward Strategy;
  - consider matters related to the Workforce Strategy;
  - agree to the recruitment of Chief Officers and related matters as provided for in Officer Employment Procedure Rules;
  - agree whether individual posts of Deputy Chief Officer are to be subject to Member or Officer recruitment/discipline and, where appropriate, agree to the recruitment of Deputy Chief Officers and related matters as provided for in Officer Employment Procedure Rules
  - consider all significant Directorate/Departmental restructuring proposals;
  - be the 'deciding committee' where national conditions allow a representation to be made prior to a redundancy situation;
  - establish a Sub-Committee to consider hearings at the Chief Executive Grievance Process Stage 1; and
  - establish a Sub-Committee to look to resolve any dispute between the local authority and the trade unions that is escalated to that level.
- 2.3.2 The Appointment Committee would, in place of the Selection Committee, be responsible for
- recruitment and appointment procedures in respect of the Head of Paid Service, Chief Officers and such Deputy Chief Officers as determined by the Employment Committee.
  - Determine all terms and conditions for Chief Officer related posts.
- 2.3.3 The Investigation and Disciplinary Committee would, in place of the former Sub-Committee of the Selection Committee, be responsible for
- disciplinary procedures in respect of the Head of Paid Service, Chief Officers and such Deputy Chief Officers as determined by the Head of Paid Service as provided for in Officer Employment Procedure Rules; and
  - suspending and keeping under review the suspension of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.
- 2.3.4 The current Appeals Committee would hear Stage 2 hearings under the Chief Executive Grievance Procedure, as agreed by the Council when considering a revised Part 3 (Responsibility for Functions) of the Council's Constitution in June 2020.
- 2.4 The Terms of Reference for the three new Committees, as attached in the appendix to this report, address the procedural requirements of the Officer Employment Procedure Rules agreed by Council in June 2020 and allocate particular Council functions to Committees of the Council.
- 2.5 The papers submitted to Council in June 2020 also noted that a review of the relevant sections of the Officer Scheme of Delegation would be undertaken. The full proposed
-

---

revised Personnel Section is provided in the appendix attached to the report. The principal proposed changes to the delegation scheme, which state certain current content more explicitly or reflect or enact other Council procedures, are

- clarification that the Strategic Director Communities and Reform (or such Officer who is senior Officer with responsibility for HR) shall have authority to determine all policy matters in relation to staffing, unless otherwise directed by the Leader of the Council;
- the provision of delegations in respect of arrangements for the suspension of the Council's senior Officers.

### **3 Health and Wellbeing Board**

- 3.1 The terms of reference refresh exercise has reviewed the presentation of the statutory functions of the Board as defined by the Health and Social Care Act 2012 and ensured that subsequent discretionary functions delegated by the Council to the Board, governance related matters assigned to the Board by either the Government or local practice in response to guidance, and alignment with the terms of reference of the Commissioning Partnership Board have been properly reflected.

### **4 Overview and Scrutiny arrangements**

- 4.1 Council in June 2020 agreed terms of reference for a revised overview and scrutiny structure comprising a Policy Overview and Scrutiny Committee, a Performance and Value for Money Overview and Scrutiny Committee, and a Health Scrutiny Committee, determining to agree the date of implementation of the revised arrangements at a future meeting of the Council. In consultation, a shorter name for the Performance and Value for Money Overview and Scrutiny Committee has been requested and it proposed that this body be called the Performance Overview and Scrutiny Committee
- 4.2 In implementing the new arrangements, Council is asked to confirm the dates of meetings of the new Committees and vary the calendar of meetings as agreed by the Council on 16<sup>th</sup> December 2020 accordingly –
- the Policy Overview and Committee to meet on dates previously identified for the Overview and Scrutiny Board and for O&S budget meetings;
  - the Performance Overview and Scrutiny Committee to meet on the dates previously identified for the Overview and Scrutiny Performance and Value for Money Select Committee;
  - the new Health Scrutiny Committee meet on the same dates as determined for the former Committee.

### **3 Options/Alternatives**

- 3.1 Option 1 – To agree the suggested refresh and other proposed amendments to the Council's Constitution.  
Option 2 – Not to agree the suggested refresh and other proposed amendments to the Council's Constitution.

### **4 Preferred Option**

- 4.1 Option 1 is the preferred option to ensure and bring coherence to previous piecemeal amendment to the Constitution, to ensure that incidental amendments and cross references are incorporated in full to aid understanding and implementation of the Constitution, to reflect mandatory procedural requirements that the Council must adopt, and to reflect revised procedures and arrangements for the effective conduct of Council business more generally.

---

## **5 Consultation**

- 5.1 The Constitutional Working Group have recommended the suggested changes arising from the general review of the Council's Constitution. Proposals in respect of the Health and Wellbeing Board and of the overview and scrutiny arrangements have been consulted on with the Health and Wellbeing Board and the Chairs of the current overview and scrutiny bodies respectively.

## **6 Legal Services Comments**

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

## **7 Background Papers**

- 7.1 None.

## **8 Appendices**

- 8.1 Appendix – Part 3 Responsibility for Functions (extracts relating to Committee terms of reference and the Officer Scheme of Delegation (Personnel)).