

Report to COUNCIL

Changes to the Constitution

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Reasons for Decision

To ensure that the Council's Constitution remains compliant with recent national planning reforms introduced through the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026.

To provide constitutional clarity regarding the exercise of executive functions during periods where the Council does not have a Leader, Deputy Leader or Cabinet Members in office.

Recommendation

Council is recommended to:

1. Approve the required constitutional amendments set out in Appendix 2 to give effect to the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 and related guidance.
2. Approve the amendments to the constitution set out in Appendix 2 regarding the exercise of executive functions in circumstances where there is no Leader, Deputy Leader or Cabinet Members in office, whereby in such circumstances, the Chief Executive may exercise executive functions under a specific constitutional delegation.

1 Background

This report sets out proposed changes to the Constitution relating to planning decisions and executive decision making.

1.1 Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026

- 1.1.1 Local planning authorities can currently set their own schemes of delegation, directing the way a planning application is determined – either by officers under delegated authority or by Councillors sitting as the Planning Committee.
- 1.1.2 As part of its wider programme of planning reform, the Government is introducing a new National Scheme of Delegation for planning functions, alongside rules on the size of planning committees. Draft regulations were laid in Parliament in June, and the changes will come into force on 31 October 2026. Any decisions made on or after that date must be in line with the new regulations. Statutory Guidance has also been published to support implementation of these changes.
- 1.1.3 The Government's aim in introducing the reforms is to provide greater clarity and consistency regarding the role of planning committees in decision-making, ensuring that the committee's focus is on applications of strategic importance, while routine and technical decisions are determined by officers.
- 1.1.4 The National Scheme of Delegation identifies specific planning application types and groups them into two schedules:
 - Those in Schedule 1 must be determined by officers under delegated powers and cannot go to Planning Committee.
 - Those in Schedule 2 should also be determined under delegated powers unless the Nominated Member and Nominated Officer consider that it needs to go to Planning Committee.
- 1.1.5 The National Scheme of Delegation also sets out how to deal with 'Own-Interest Applications'. These are applications made by officers, councillors (members) or on behalf of the Council itself.
- 1.1.6 The Regulations make provision for the Council to identify a Nominated Member and a Nominated Officer, as well as substitutes, to discharge the relevant parts of the Regulations.
- 1.1.7 The statutory guidance states that the Nominated Member "should be the Chair of the Planning Committee" and that the Nominated Officer "should be the Chief Planning Officer or equivalent officer who has extensive professional planning experience" (for the Council this is the Assistant Director for Planning and Development). The proposed approach conforms with statutory guidance.

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- 1.1.8 The statutory guidance confirms that “Where a planning function is not listed in either Schedule 1 or 2, it is for the Local Planning Authority to decide whether it should be delegated to an officer or referred to a committee or sub-committee for a decision (as part of its local constitution)”. Details of Schedule 1 and Schedule 2 can be found in the link to the legislation referred to in the background papers section of this report.
- 1.1.9 The “overriding presumption” should be that applications are determined by officers and determined by committee as an exception. This is in line with the approach under the current local scheme of delegation.
- 1.1.10 In making that decision the Nominated Member and Nominated Officer must apply the criteria in Regulation 5, known as the Gateway Test. It is for individual local planning authorities to decide whether the application passes the test and be determined by their Planning Committee or not.
- 1.1.11 The Gateway Test is whether the application raises:
- (a) one or more issues of economic, social or environmental significance to the local area; or
 - (b) one or more significant planning matters having regard to the development plan and any other material considerations.
- 1.1.12 The guidance also states that “As a minimum, the local planning authority should keep a record of the cases the Nominated Officer and Nominated Member have considered for referral to committee, the outcome of their consideration and the reasons for their decision. They should report this to the planning committee on a regular basis and make it available on their website.”

1.2 Executive decision making

- 1.2.1 The Council remains under a statutory duty to operate executive arrangements. All the executive functions of the Council are, by virtue of section 9E(2) of the Local Government Act 2000, vested in the Executive Leader who determines the allocation and discharge of executive functions in accordance with the Constitution. Oldham has been operating under the delegations of executive functions since the vacancy in the position of Leader arose in May 2026.
- 1.2.2 The Local Government Act 2000 states where the office of the Leader is vacant, the Deputy Leader can act in their place, and if the Deputy Leader is unable to act, the Executive (called the Cabinet in Oldham) or a member of the Executive can act in the Leader’s place. The absence of a Leader, Deputy Leader and Cabinet means the Council cannot operate in the manner envisaged by the Act.
- 1.2.3 The absence of an Executive Leader does not prevent officers from exercising powers that have been lawfully delegated to them under the Constitution, nor does it prevent statutory officers from carrying out their respective duties. Delegations have been exercised having regard to external legal advice and have enabled the Council to continue to discharge its statutory functions and responsibilities without interruption.

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- 1.2.4 The current position was not envisaged as a long-term governance arrangement. Whilst existing delegations have enabled business continuity and lawful decision-making, there is merit in providing greater constitutional certainty should the situation continue for an extended period.
- 1.2.5 The Constitution authorises the Chief Executive to take any emergency decisions in respect of the Council's executive functions (in consultation with the Leader or, in the absence of the Leader, the Deputy Leader) which cannot be delayed until the next Cabinet Meeting. In the interim, the Chief Executive has consulted all political group leaders, through a fortnightly cross-party consultative group of all group leaders and deputy leaders. The focus during the absence of a Leader has been to ensure continuity of essential services, with only the necessary decisions being taken to:
- Maintain service delivery;
 - Protect vulnerable residents;
 - Meet statutory obligations;
 - Ensure financial stability;
 - Maintain regulatory compliance; and
 - Fulfil legal or contractual obligations.
- 1.2.6 There has been statutory officer oversight of all key and principal decisions, which have been subject to enhanced legal and finance review by the Monitoring Officer and the Section 151 Officer or their deputies, and an emergency powers governance framework was established requiring all officers to set out the reasons why decisions could not be delayed, pending the election of a Leader. A separate report to Council details those decisions taken in consultation with political group leaders.

2. Changes to the Constitution

2.1 Planning

- 2.1.1 The proposed changes to the Council's Constitution are detailed in Appendix 1 of this report as tracked changes, with a clean copy of the applied changes in Appendix 2.
- 2.1.2 These changes reflect the fact that Schedule 1 applications will in future always be delegated to officers for a decision unless they are an "Own-Interest" application. Schedule 1 applications are essentially minor and householder planning applications. In comparison to the current Constitution, the primary difference for such Schedule 1 applications is that they cannot now be referred to Planning Committee for a decision if a ward councillor requests it, and the proposed changes to the Constitution therefore remove this procedure from Part 8 of the Constitution.
- 2.1.3 Examples of the types of Schedule 1 application that have been referred to Planning Committee in recent times under this procedure would include the change of use of a property to a HMO and minor applications that may have generated significant local interest and objection. These would have to remain as delegated officer decisions under the new 2026 Regulations.

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- 2.1.4 In considering Schedule 2 applications and which may be referred to Planning Committee for a decision, the guidance accompanying the new 2026 Regulations allows authorities to introduce a triage system into this process given it recognises that some larger and urban authorities would still receive a large number of Schedule 2 applications. The proposed changes to the Constitution include such a triage system for Oldham, reflecting the types of applications that under the current Constitution would normally be delegated to officers.
- 2.1.5 Such Schedule 2 applications that would have been delegated to officers under the current Constitution are therefore retained as delegated officer decisions under the proposed changes to the Constitution and would not be considered for referral to Planning Committee. This would include, for example, developments of 10-19 dwellings, which are classed as a “major” planning application, but which we do not take to Planning Committee for a decision under the current Constitution.
- 2.1.6 Under the proposed changes to the Constitution, the remaining Schedule 2 applications will be determined by officers in line with the legislation, unless both the Nominated Officer and Nominated Member agree that:
- 1) The proposal raises one or more significant planning matters having regard to the Development Plan and any other material considerations;
 - 2) The proposal raises one or more issues of economic, social or environmental significance to the local area; or
 - 3) The application has been made by the Council itself or an officer or member of the Council or if, in the view of the Nominated Member and the Nominated Officer, the Council or any of its members or officers otherwise has an interest in the application.
- 2.1.7 The above “Gateway Test” therefore would capture all applications that would be decided by Planning Committee under the current Constitution but would first require the Nominated Officer and Nominated Member to consider whether those applications meet the above criteria before referring them to Planning Committee for a decision. This ensures that Planning Committee only consider applications that are truly significant in their potential impact on the borough.
- 2.1.8 A record will be kept of the cases the Nominated Officer and Nominated Member have considered for referral to the Planning Committee, the outcome of their consideration and the reasons for their decision. This will be reported to the Planning Committee on a regular basis and made available on the Council’s website.
- 2.1.9 Should the Nominated Officer and Nominated Member not agree whether the application passes the Gateway Test, the Government’s statutory guidance states that “Nominated Officers and Nominated Members should make every effort to reach agreement on which cases should be referred to committee. However, where agreement is not possible, the case must be determined by officers in accordance with regulation 5(2) or regulation 6(2)”.
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- 2.1.10 It is therefore critical to have a Chair of Planning Committee in place for this new referral process. Without one, there is no Nominated Member for the Nominated Officer to consult, and so all planning applications would need to remain as a delegated officer decision. Nominations for the roles of Chairs and Vice Chairs of Committees are subject to a separate report on the agenda for Council.
- 2.1.11 In making the changes required by the new legislation, the report also seeks to update the Constitution re-affirming the requirement for annual training for members of the Planning Committee before they can sit on the committee, and the need for members of committee to make themselves available for the training on the date provided in the municipal calendar.

2.2 Executive decisions

- 2.2.1 The Council's current governance arrangements have highlighted that the Constitution does not expressly address the circumstance in which there is simultaneously no Leader, Deputy Leader or appointed Cabinet Members. Whilst the Local Government Act 2000 provides for the Deputy Leader, the Cabinet or a Cabinet Member to act in place of the Leader where required, the legislation does not expressly provide for the position that has arisen in Oldham where all executive offices are vacant.
- 2.2.2 The proposed amendments are therefore intended to clarify, rather than fundamentally alter, the Council's existing governance arrangements. They expressly set out who may exercise executive functions in the exceptional circumstance that there is no Leader, Deputy Leader or Cabinet Members. This provides transparency for Members, officers, partners, regulators and the public regarding the Council's decision-making arrangements.
- 2.2.3 The proposed new Executive Procedure Rule 3.6 set out in Appendix 1 with tracked changes provides that, where there is no Leader, Deputy Leader or Cabinet Members, executive functions shall be exercised by the Chief Executive on an interim basis. This reflects the practical approach that has been adopted to date to ensure the continued discharge of executive functions and the effective operation of the Council.
- 2.2.4 In addition, the amendments to the Chief Executive's delegated powers are intended to remove ambiguity between executive and non-executive emergency powers. The revised wording confirms the Chief Executive's authority to take emergency decisions in relation to both non-executive and executive functions where decisions cannot reasonably await the next meeting of the relevant decision-making body. These provisions support organisational resilience and ensure that the Council can continue to respond effectively to urgent issues, emergencies and statutory requirements regardless of the status of executive appointments.

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- 2.2.5 Importantly, the amendments do not remove the Council's obligation to appoint a Leader at the earliest opportunity, nor do they seek to establish a permanent alternative to the Leader and Cabinet model. Rather, they provide a clear constitutional framework to govern the interim period, ensure continuity of lawful decision-making, and reflect the arrangements that have operated successfully under legal advice since May 2026. The Chief Executive will continue to operate the current arrangements whereby there is structured and ongoing engagement with Group Leaders to consult them before decisions are made.
- 2.2.6 The amendments are therefore proposed in the interests of good governance, transparency and business continuity, ensuring that the Constitution accurately reflects the Council's decision-making arrangements in circumstances which were not expressly contemplated when the current provisions were drafted.
- 3 Options/Alternatives**
- 3.1 Alternative ways of applying the National Scheme of Delegation are possible and have been considered by officers but were not recommended given that they did not align as closely with the well-established processes in Oldham.
- 3.2 In relation to executive decisions, the alternative option would be to make no constitutional changes and continue to rely upon the existing delegations and external legal advice obtained following the vacancy in the office of Leader, but this is not recommended.
- 4 Preferred Option**
- 4.1 To agree the changes to the Constitution which are proposed in this report in Appendix 2.
- 5 Consultation**
- 5.1 The planning regulations are nationally prescribed and have been subject to consultation by central government.
- 6 Financial Implications**
- 6.1 There are no financial implications arising directly from this report.
- 7 Legal Implications**
- 7.1 The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 require local planning authorities to implement the prescribed arrangements by 31 October 2026. The recommendations in this report are intended to support compliance with those Regulations, including the necessary amendments to the Constitution and associated governance processes. (A Evans)

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- 7.2 The Council remains under a statutory duty to operate executive arrangements under Part 1A of the Local Government Act 2000. The current circumstance whereby there is no Leader, Deputy Leader or Cabinet is not expressly contemplated by either the Act or the Council's Constitution. The proposed constitutional amendments do not alter the Council's executive model but provide greater clarity regarding the exercise of executive functions during an interim period where executive offices are vacant.
8. **Procurement Implications**
- 8.1 N/A
- 9 **Equality Impact, including implications for Children and Young People**
- 9.1 No
- 10 **Key Decision**
- 10.1 No
- 11 **Key Decision Reference**
- 11.1 N/A
- 12 **Background Papers**
- 12.1 [The Town and Country Planning \(Discharge of Local Planning Authority Functions\) \(England\) Regulations 2026 - which includes Schedules 1 and 2 referred to in the report](#)
- [Planning Committees and the National Scheme of Delegation of Planning Functions: Guidance for local planning authorities in England](#)
- [Planning committee reform: statutory consultation on draft regulations and guidance – government response](#)
- [Oldham Council Constitution](#)
- 13 **Appendices**
- 13.1 Appendix 1 - Tracked changes to extracts of the Constitution
Appendix 2 - Clean copy of the Constitution with changes applied