

**Report to Council**

# **Constitutional Amendments**

**Report of the Director of Legal Services**

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## **Reason for Decision**

The Council is required to consider its constitution annually to determine whether any amendments are required.

To agree suggested Constitutional amendments as agreed by the Constitutional Working Group and Group Leaders.

## **Recommendations**

Council are asked to consider the recommendations made in paragraph 2 of the report and require current Constitution to be amended consequently if those recommendations are approved and also to confirm the unamended parts of the Constitution.

## Constitutional Amendments

### 1. Background

- 1.1 The Council has an obligation to review annually the Constitution to ensure it is fit for purpose and reflects changing practices or elected member requirements in the Council Procedure Rules.
- 1.2.1 In addition to issues raised by members and officers since the last review, the Constitutional Working Group has considered matters which they have submitted to Council for approval. The issues have also been considered by Group Leaders.

### 2. Proposed Amendments

#### 2.1 Part 2 - Article 15 – Decision Making (Appendix 1)

It is proposed to amend Article 15 to clarify types of decisions and categories of decisions. It is recommended that the Council operates 3 types of decision:

##### **1. Key Decisions** - £250k and above. – A decision in relation to an Executive function which is likely to:

- Result the Council incurring expenditure which is, or the making of savings which are, significant having regard to the local Council's budget for the service or function to which any decision relates; or
- to be significant in terms of its effects on communities living or working in the area comprising two or more wards in the area of the local Council.

Significant expenditure or savings" is defined as:

- Revenue expenditure or saving that is neither provided for within the Budget, nor virement permitted by the Constitution.
- Capital expenditure that is not provided for within:
  - The capital estimate for a specific scheme; or
  - A lump sum capital estimate.
- Of the declaration of land or property, the estimated value of which exceeds £250,000, as surplus to the Council's requirements.
- Securing approval in principle to the acquisition or disposal of land or property the value of which is estimated to exceed £250,000.
- Securing approval in principle to the taking of, or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licences, easements or wayleaves, at considerations in excess of £250,000 per annum or a premium of £250,000.
- Any decision which involves expenditure or savings over £250,000.

Key Decisions must be recorded on the Key Decision Document at least 28 days before a Key Decision is made. Key decisions can be made by the relevant Executive Member and Cabinet. Contracts in excess of £400,000 must be made by Cabinet.

**2. Principal Decisions** – £100k-250k - A decision in relation to a Council or Executive function which is not a key decision and which:

- Results in the Authority incurring expenditure or making savings (including receipt or loss of income) over £100,000 each year: or
- Is in the opinion of the Director or Executive Director of such significance that a record of the decision would ensure transparency and accountability in relation to decision making within the Authority.

Principal decisions can be taken by the relevant Executive Director or relevant Officer under the directorate scheme of delegation. Any contracts of this value must be taken by the relevant Cabinet Member.

**3. Administrative Decisions** – £5k-100k - A decision in relation to a Council or Executive function which is not a key or a principal decision and results in the Authority incurring expenditure up to £100,000. The decision must be:

- Within an approved budget and not in conflict with the Budget and Policy Framework or other approved policies
- Does not raise new issues of policy

The majority of administrative decisions will be taken by the relevant Executive Director or relevant Officer under the directorate scheme of delegation.

These changes will ensure clear transparent decision making.

## 2.2. Part 3 - Responsibility for Functions – Section 6, Terms of Reference of Committees Selection Committee (Appendix 2).

In May 2015 Standing Orders were amended (Part 4 Rules of Procedure – Officer Employment Procedure Rules) to provide specifically for the disciplinary and the dismissal of three “Protected Officer” posts, namely the Head of Paid Service (Chief Executive), Monitoring Officer (Director of Legal Services) and Section 151 Officer (Director of Finance). This followed changes, introduced by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, to statutory procedures that authorities must adopt in respect to the dismissal of such Protected Officers. In addition these regulations require that the council put specific procedures in place where disciplinary action or dismissal is envisaged against these officers.

The Regulations also provide new arrangements, in particular, reference to a panel comprising of independent persons before a decision is made.

The Council must invite independent persons who have been appointed to support the conduct regime applying to Elected Members (Section 28 (7) Localism Act 2011) to form the Independent Panel.

Consultation will need to take place with the current Independent Members and this enhanced role may require training and in terms of a remuneration payment to be considered by the Independent Remuneration Panel.

The Panel must be established by the Council under the provisions of s.102 (4) of the Local Government Act 1972 provisions in relation to Advisory Committees and this will be reflected in the Constitution. The provision allows the composition of the Panel to be comprised of non-elected members.

The Selection Committee within its current terms of reference deals with matter pertaining to Head of Paid Services and Chief Officers.

It is proposed that the terms of reference for Selection Committee is extended to include investigation and disciplinary matters for “Protected Officers” to include the power to establish a sub- committee comprising 3 politically balanced Members of the Selection Committee, to be called the “Investigation and Disciplinary Committee” (I&CD) to manage any process.

The terms of reference for the Investigation and Disciplinary Committee shall be to:

- Consider the initial allegation to determine whether an investigation is required and, where relevant
- Commission and appoint the Independent Investigator.
- Consider and undertake suspension where required.
- Appoint external advisors if required and as appropriate e.g. the Employer's Secretary or NWEO where independent or external advice may be required.
- Receive the report and recommendations of the Investigator.
- Following the investigation hold a hearing to determine and implement any action short of dismissal.
- Alternatively determine if a recommendation for dismissal is appropriate and, if so, appoint and refer the matter to the "Independent Panel" for their consideration of the proposal.
- Action the outcome from the Independent Panel where it recommends action short of dismissal and this recommendation is supported by the I&DC, or
- To make recommendations to full Council as to the dismissal of a Protected Officer.
- Nominate a panel member to present the findings of the investigation and the rationale for the recommendation to dismiss to the Independent Panel and to the full Council meeting.
- Administratively action the decision of full Council.

It is also proposed that an Independent Panel be established to comprise a minimum of two independent persons with the terms of reference "To advise the authority on matters relating to the dismissal of relevant officers of the authority."

Part 3 - Responsibility for Functions, Sections 7, 8 and 9 – Individual Cabinet Member Decisions, Delegations to Individual Cabinet Members and the Officer Scheme of Delegation (Appendix 2)

There are consequential amendments to Part 3 Responsibility for Functions arising from the changes to Article 15:

Section 7 – 7, 7.4, 7.6

Section 8

Section 9 – 4, 4.1, 4.2, 6.6

Delegation to Individual Cabinet Members p.68 of Part 3

2.3 Part 4 – Rules of Procedure – 1. Annual Meeting of the Council – 1.1 Timings and Business (Appendix 3)

It is proposed by the Constitutional Working Group to amend the Council Procedure Rules, Annual Meeting, Timings and Business to allow Outstanding Business to be tabled at the Annual meeting if the business is time limited and cannot wait until the next ordinary meeting of Council.

2.4. Part 4 – Rules of Procedure – Access to Information Procedure Rules Sections 3, 14, 19 and 22 (Appendix 3)

Section 3 - The use of social networking websites such as Twitter and Facebook and blogging to communicate what is happening, as it happens in Council meetings. To include the Council's Publicity protocol as an appendix.

There are consequential amendments to Part 4 Access to Information Procedure Rules arising from the changes to Article 15:

Section 14  
Section 19  
Sections 22.3, 22.4

**Part 4 – Rules of Procedure – Contract Procedure Rules (Appendix 3)**

The Council's Contract Procedure Rules apply to all contracts for the procurement of works, goods, services or concessions made in the name of the Council. The Contract Procedure Rules contain information such as rules relating to contracts of varying values, advertising and tender evaluation. They also support the Council's co-operative ambitions delivering good value services to support a co-operative borough.

However, the current Contract Procedure Rules have required updating and revision to take into consideration the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016. The amendments to the existing Contract Procedure Rules strengthens and encourages safe commissioning and procurement practices across the Council and its partners. There are also consequential amendments to the Contract Procedure Rules arising from the changes to Article 15 in relation to thresholds. A table detailing the amendments is attached at appendix 1.

- 3 Members are requested to consider the proposed amendments to the Constitution.

The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act.

- The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
- The Openness of Local Government Bodies Regulations 2014
- Public Contracts Regulations 2015
- The Concession Contracts Regulations 2016.
- Oldham Borough Council Constitution  
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