

Meeting Date	26 th January 2011
Report Title	Constitution Review
Portfolio Holder	Leader
SMT Lead	Mark Radford
Head of Service	Monica Blades-Chase
Lead Officers	Katherine Bescoby and Monica Blades-Chase
Key Decision	No
Classification	Open
Forward Plan	Reference number:

Recommendations	1. That the Committee considers the proposed amendments to the Budget and Policy framework with proposed changes to policies and strategies to be approved by full Council
	2. That legislative changes to the Scrutiny function and the steps being taken to review local arrangements be noted.
	3. That amendments to Article 6 and Part 3 regarding Scrutiny and Policy Overview functions be recommended to Council.
	4. That the progress in relation to the review of the Local Engagement Forums be noted
	5. That amendments regarding Article 13 – “Decision-making” be recommended to Council and that the work on developing proposals for decision-making by Ward Members be noted.
	6. That the proposed “Introduction to Part 3 –“Responsibility for Functions” be recommended to Council
	7. That the Committee recommends an amendment to the Local Choice Functions so that Cabinet make appointments to Outside Bodies discharging Executive Functions.
	8. That the statutory requirements regarding appointment and dismissal of statutory officers and the Employment Procedure Rules be noted and that the amendments proposed be recommended to Council.
	9. That the Committee considers merging the Appointments Committee and the General Purposes Committee and that the current Appointment Committee should be a sub-committee, so that all employment matters are dealt with by the same committee, as appropriate.
	10. That the Committee recommends the proposed amendment to

	the Terms of Reference of the Hackney Carriage Committee and considers merging the Hackney Carriage and General Licensing Committees.
	11. That status of the Local Engagement Forums, Joint Transport Board and Swale Rural Forum be noted and that the amendments to the layout of the Part 3 regarding Executive Functions be recommended to Council.
	12. That advice regarding Joint Arrangements be noted and that those organisations or arrangements falling within that definition be added to the appropriate parts of the Constitution.
	13. That the principles regarding Officer Delegations be recommended to Council and that the revised Scheme of Officer Delegations be recommended to Council following the restructuring that took place in 2010.
	14. That the Committee considers the proposals relating to the Council Procedure Rules including the proposal that a report on a strategic theme should be introduced at each Council meeting (other than Annual Council or budget setting meeting) with the opportunity to ask questions (similar to the Leader's Statement).
	15. That the legal provisions relating to the attendance at Cabinet meetings and the Access to Information Procedure Rules are noted and that the proposed amendments be recommended to Council.
	16. That the timetable for the amendment of the Financial Standing Orders be noted.
	17. That the Standards Committee be asked to consider protocols set out in paragraph 3.4 below and options for the local implementation of provisions in the Localism Bill relating Standards and Ethics.
	18. That the draft protocol on Outside Bodies be considered and recommended to Council, including that outside body appointments are considered by the General Purposes Committee for recommendation to Council.
	19. That the Officer Code of Conduct approved by Senior Management Team be noted
	20. That the Committee notes the arrangements that the Council currently makes to discharge its obligations under Section 138 of the Local Government and Public Involvement in Health Act 2007. That the Committee recommends that the Constitution be amended to incorporate arrangements made to comply with this duty

Purpose of Report and Executive Summary

- 1.1 The General Purposes Committee met on the 28th October to discuss the proposed amendments to the Constitution, for recommendation to the Council. At that meeting it was recognised that there was further work to do on a number of areas, and this report presents further information for the Committee to consider.

2 Background

- 2.1 At the Council meeting held on 13th October 2010, the Council considered a report regarding the proposed review of the Constitution. At that meeting, it was agreed that

1) That the Council agrees the work programme and timetable for the review.

(2) That the terms of reference of the General Purposes Committee be extended to include the consideration of amendments to the Constitution and to make recommendations to the Council.

(3) That it be noted that the amendments required as a result of legislation will be incorporated in the Constitution in line with the delegation to the Monitoring Officer.

- 2.2 The General Purposes Committee met on the 28th October 2010. At that meeting, Members were advised that there were a number of areas where the constitution needed to be updated; however, due to changing legislation it would not be possible for all updates to be made in 2010.
- 2.3 The Minutes of the General Purposes Committee set out details of the Committee's deliberations. There were some areas where further information or reports are required, and those areas would be considered further in the New Year. The recommendations of the Meeting are set out below.

RECOMMENDED:

(1) That Officers prepare a report to the Council meeting on 1st December setting out proposed changes to the Constitution which were recommended by the General Purposes Committee, with an updated work programme.

(2) That the Council notes that there will be further work on the Constitution in the new year and that there may be a need for an additional Council meeting to ensure that the Constitution is updated in readiness for the new Council following the all out elections on 5th May 2011.

- 2.4 Due to delay caused by adverse weather conditions the Council did not consider the General Purposes Committee's recommendations until 11 January 2011.
- 2.5 At the Council Meeting on 11 January 2011, the following resolution was passed.

“Delegation to monitoring officer to amend the Constitution
The constitution is not a primary document but is derived from other decisions, fact and law

The Monitoring Officer is delegated to ensure that the Constitution and the Councils procedures meet all legal requirements and to make any necessary updates to the Constitution (as required by law) where there is no discretion

No part of the constitution is to be amended by any person or bodies of persons representing the Full Council without the express permission of the Full Council – any delegated permission only to be granted on a singular basis

All new additions and amendments to the constitution remain entirely within the responsibility of the Full Council and must be agreed at a properly convened meeting of the Full Council.”

- 2.6 The effect of this Motion is that no changes can be made to the Constitution, unless agreed at a full Council meeting. This means that the exact wording of any addition or amendment has to be considered by the General Purposes Committee and then agreed by Council. This can result in a delay in complying in new legislation and will affect the work programme and proposed timetable. There will also be additional costs (printing, postage and officer time) because detailed working papers will have to be produced for all members of the Council for each amendment or change. In some years this could amount to a significant increase in costs.

- 2.7 The Council meeting also agreed: -

- That the Interim Head of Legal Services should provide advice on the proposal that changes to committee membership be delegated to Group Leaders. There is no power to delegate Council functions to an individual Member, but powers can be delegated to an officer in consultation with a member or to a Committee (e.g. General Purposes or a sub-committee of that committee).
- That Individual Decision-Making by Ward members should not be included in the Constitution at this time and would be considered at a later meeting once a procedure note was available.

3 Proposal

- 3.1 The Committee is asked to give a view and make recommendations to the Council regarding further changes to the Constitution as set out in the attached **Appendix I**. An updated work programme is attached as an **Appendix II** to this report.
- 3.2 There are still a significant number of areas where further changes will need to be reflected in the Constitution. However, now is an appropriate opportunity to give an update on some of those areas and the issues are set out below. In addition, the progressive implementation of the Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009 will require progressive changes to the Constitution over the next couple of years.

Localism Bill

- 3.3 Some aspects of the work programme for the Constitution review cannot be progressed now because they relate to provisions that are covered by the Localism Bill, for example,
- Return to the Committee System
 - Abolition of the Standards regime and the Members' Code of Conduct

However, it will be some time before the main provisions of this Bill can be implemented, possibly as late as 2012 for the abolition of the Standards regime and 2015 before the Authority can pass a resolution permitting it to return to the Committee System.

Return to the Committee System

- 3.4 It appears that District Councils will not be able to return to the committee system before 2015. This is because of the timetable set out in Clause 9R of the Bill. For non-metropolitan districts any resolution to move to a committee system can only take effect on the 3rd day after the first ordinary elections of councillors from "2011 and every fourth year thereafter". Therefore as the provisions of the Bill are unlikely to be passed before the elections in 2011, as an "all out" district council, SBC cannot move to the committee system before 2015.

Abolition of the Standards Committee and the Code of Conduct

- 3.6 The current code is likely to remain with us for sometime, which means that the Council is still required, by law, to have a Standards Committee and to assess and determine complaints of Member Misconduct. We have no legal authority to introduce other arrangements for handling (or dismissing) complaints that may amount to a breach of the current Code of Conduct.

3.7 The General Purposes Committee agreed that the following codes and protocols be included in the Constitution and it is proposed that the Standards Committee considers drafts for recommendation to Council.

- LOCAL AUTHORITY ENTITIES
- USE OF RESOURCES AND SUPPORT FACILITIES FOR MEMBERS
- MEMBERS' ACCESS TO INFORMATION
- MONITORING OFFICER
- GIFTS AND HOSPITALITY

Proposed changes to the law on predetermination

3.8 The provisions are to be defined by Regulations, but the current case law does open mind. Before making any changes to guidance to members it is advisable to wait for the change in legislation before making further amendments to the guidance given to Members acknowledges that members will have views on matters and may well have expressed them, and that they should not be automatically disqualified because of this. However, decision-making must always be approached with an open mind and a willingness to change views if persuaded by information presented at the time the decision is taken. The current advice to members is to avoid being placed in that situation (esp. on Planning and Licensing) or to make it clear that they still have an open mind.

3.9 A considerable of work has already been done, but there are still some areas where it has not been possible to progress matters to a point where Members can take informed decisions on the amendments that have been advised. The intention has been to have the completely revised Constitution in place for the new municipal year. However, the matters set out in paragraph 2.6 above mean that additional meetings of the General Purposes Committee and full Council would have to be held before the pre-election period. Additional officer resources would also be needed because existing resources are required to prepare for three Elections ("all-out", parish councils and a referendum) and Annual Council Meeting.

4 Alternative Options

4.1 The Committee is being asked to give its views on the proposals to update the constitution. The Committee may wish to suggest alternative proposals where this is possible.

5 Consultation Undertaken or Proposed

5.1 All Members have been kept fully aware of the areas identified for review which have been considered by General Purposes Committee and Council. Members have been encouraged to give their views on the constitution to the interim Head of Legal or the Democratic and Electoral Services Manager.

6 Implications

Issue	Implications
Corporate Plan	Becoming a High Performing Organisation
Financial, Resource and Property	None identified at this stage, it is anticipated that the work arising out of the constitution review will be contained within existing resources.
Legal and Statutory	Appendix I sets out the proposed changes and explains why those changes are advised. Appendix II sets out further areas where the constitution will be reviewed.
Crime and Disorder	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	None identified at this stage.
Sustainability	None identified at this stage.

7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report
- Appendix I: Proposed changes to the Constitution
 - Appendix II: Updated work programme which identifies all work streams in relation to the Constitution review.

8 Background Papers

- 8.1 Reports to Council on 13th October 2010 and 1st December/11th January 2011. Report to the General Purposes Committee on 28th October 2010, including the updated summary document of proposed changes to the constitution.
- 8.2 Constitution Review Working papers – various dates