

General Purposes Committee	Agenda Item:
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Meeting Date	28 February 2013
Report Title	Constitution Review
Portfolio Holder	Leader
SMT Lead	Mark Radford, Director of Corporate Services
Head of Service	
Lead Officer	Katherine Bescoby
Key Decision	No
Classification	Open
Forward Plan	Reference number:

Recommendations	1. That the Committee recommends the revised terms of Reference of the Audit Committee.
	2. That the Committee recommends the proposed amendments to the Terms of the General Licensing Committee.
	3. That the Committee review the operation of themed debates and make recommendations on future operation.
	4: That the Committee review the process of questions by Members and make recommendations on future operation.
	5. That the Committee recommend to Council the process for identifying any crime and disorder concerns and that the terms of Reference for the Police and Crime Panel for Kent and Medway be added to Part3.3.4 of the Constitution which details joint arrangements with other authorities.
	6. That the Committee recommends the revised Scheme of Officer delegations to Council.
	7. To note the consequential amendments to Part 4.6 of the Constitution (Standards Committee Procedure Rules) and to Part 4.10 (Public Participation Procedure Rules) and to recommend to Council.
	8. To note the alignment of the Terms of Reference

	<p>of the Appointments Sub Committee and the Head of Paid Service's delegation to reflect member involvement in appointments at Head of Service level.</p> <p>9: To note the Proper Officer Schedule and to recommend its inclusion in the Constitution to Council.</p> <p>10: To note the revised arrangements for Access to Information and to recommend the revised wording to Council.</p> <p>11: To note the Outside Bodies to which the Leader is appointed by virtue of being Leader and to recommend to Council that commentary be added to Part 3.6.2 to reflect this.</p> <p>12: That once the policy framework has been agreed by the authority, then the Monitoring Officer be authorised, after consultation with the Leader, to make any consequential amendments to the Council's Financial Regulations and Contract Standing Orders to reflect the Policy framework introduced as a result of the Public Services (Social Value Act) 2012.</p>
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Purpose of Report and Executive Summary

- 1.1 The Constitution is a living document and as ever in local government nothing stays the same for long. The Council only recently completed a comprehensive review of the Constitution so this report is intended to inform a 'care and maintenance' review of the Constitution. It identifies issues for consideration by the Committee as well as those issues which need to be included within the Constitution over which there is no discretion.
- 1.2 The report uses Appendix 1 as an action plan to inform the issues to be considered, where appropriate, this is supplemented by additional working papers.
- 1.3 Reviewing the constitution regularly ensures it is fit for purpose and maintains good governance and decision making arrangements.

2 Background

- 2.1 The following section is split into two sections: issues for consideration by the Committee and those which need to be included in the Constitution where there is no discretion.

Issues for consideration by the Committee

Changes to Terms of Reference of Standing Committees

- 2.2 There are recommended changes to the terms of reference of Standing Committees. In particular, the Audit Committee has considered its terms of reference following discussions with external audit and the peer review of audit. The suggested terms of reference are detailed at Appendix A1.

Recommendation 1: That the Committee recommends the revised terms of Reference of the Audit Committee

- 2.3 There is also an inconsistency in the treatment of minutes from quasi-judicial committees. Currently the minutes of General Licensing Committee are referred on to Council for approval. On occasions this has resulted in the items being debated again. This can undermine the authority of the General Licensing Committee and is not effective decision making.
- 2.4 The suggested changes to the Terms of Reference are set out within the Action Plan. In summary, these amendments are designed to give the General Licensing Committee authority to make policy. It is considered good decision making to give the General Licensing Committee this level of autonomy over matters within its remit.
- 2.5 So Item 1 of the current terms of reference is proposed to be changed to reflect that it can make policy rather than recommend to Council. Item 7 is again changed to give the Committee authority to make decisions on Hackney Carriage and Private Vehicles and Drivers rather than recommendations to Council. Item 8 can be deleted as all concessionary fare issues are now dealt with by KCC. Appendix A1 sets out the details.

Recommendation 2: that the Committee recommends the proposed amendments to the Terms of the General Licensing Committee

Themed Debates

- 2.6 When the last major review of the Constitution was undertaken, themed debates were introduced for the first time. It is considered important to review the operation of themed debates in the light of experience.

Recommendation 3: that the Committee review the operation of themed debates and make recommendations on future operation

Member Questions to Council

2.7 There has also been a significant increase in the number of member questions submitted to Council. Whilst this is a valid approach to the democratic process and provides an opportunity for seeking information and holding the administration to account, it does consume resources within a tight timescale and can impact on Officers' daily priorities.

2.8 It is not intended to curtail the asking of questions, however, it is suggested that the process can be better managed. Various other authorities limit the number of questions that can be submitted by a member to a Council meeting as well as having a time limit for the consideration of questions at the meeting. It is important to balance legitimate questions with the time taken at the meeting. It is suggested that the Committee review the operation of member questions at Council. The following points may aid members, a suggested revised Procedure Rule for Questions by members is attached at Appendix Alll.

- A reasonable limit on the number of questions for any member should be considered. It is suggested that two questions per meeting might be appropriate
- The process could make it clear that questions will be called in their numbered order and will be answered in the order they are received by Democratic Services
- Responding to the submitted questions can involve significant resource and the current deadline of 4.30 pm the Friday before the meeting imposes a very tight timetable to formulate a response. It is suggested that the deadline be brought forward to the Wednesday before the meeting.
- Should there be a time limit for questions? A process could be adopted where questions that have not been answered before the end of the 30 minutes allowed will not be called but all questions will be answered in writing.
- Should the position relating to supplementary questions be clarified? The process could state that after the answer has been given the questioner may put one supplemental question in order to clarify a point in the answer.

Recommendation 4: that the Committee review the process of questions by Members and make recommendations on future operation

Police and Crime Panel

2.9 At the November Council meeting, the following was agreed:-

That this Council be recommended to refer to General Purposes Committee for it to consider the most appropriate way to share any Swale

crime and disorder concerns with the Council's Police and Crime panel representative.

- 2.10 It must be remembered that the Police and Crime Panel has agreed terms of reference. Given the nature of the Panel these are necessarily set at a strategic level. They include, amongst other things, reviewing the draft Police and Crime Plan, holding a public meeting to question the Police and Crime Commissioner, commenting on the proposed precept and reviewing how the Police and Crime Commissioner discharges their functions. The full terms of reference are attached at Appendix AIV.
- 2.11 Given the types of issues that can be considered by the Panel, it is suggested that prior to meetings of the Panel, a message is added to the despatch letter asking Members to contact the Leader with any areas of concern. These must be within the terms of reference of the Panel.

Recommendation 5: that the Committee recommend to Council the process for identifying any crime and disorder concerns and that the terms of Reference for the Police and Crime Panel for Kent and Medway be added to Part3.3.4 of the Constitution which details joint arrangements with other authorities.

Scheme of Officer Delegation

- 2.12 Any review of the Constitution gives the opportunity to review the Scheme of Officer Delegations to reflect legislation changes and operational issues. The current scheme was agreed by Council on 16 May 2012. Heads of Service have been asked to review their delegations. Appendix AV sets out the proposed amendments to the Scheme.

Recommendation 6: that the Committee recommends the revised Scheme of Officer delegations to Council

Issues which need to be included within the Constitution

- 2.13 There are a number of matters of which the Council has no discretion.

Standards Committee Procedure Rules

- 2.14 There are a number of updates required for the Standards Committee procedure rules that are consequential on the new standards arrangements.
- 2.15 Appendix BI sets out the agreed Swale Code of Conduct (the current Constitution includes the Code without the full details of Interests to be registered as at the time of publication Regulations had not been received). It also sets out the Monitoring Officer protocol for dealing with complaints received; this has been varied to reflect

the change in the regime. The Assessment Criteria and Hearings Procedure have also been revised (Appendix BII and BIII).

- 2.16 The Public Participation Rules also need to be updated to reflect that under the new standards arrangements if a member has a pecuniary interest there is no provision for public speaking, regardless of whether public speaking provisions apply (Appendix BIV).

Recommendation 7: to note the consequential amendments to Part 4.6 of the Constitution (Standards Committee Procedure Rules) and to Part 4.10 (Public Participation Procedure Rules) and to recommend to Council

Terms of Reference of the Appointments Sub Committee

- 2.17 In reviewing the Constitution an anomaly has been identified between the Terms of Reference of the Appointments Sub Committee and the Head of Paid Service's delegation. To align the processes, wording needs to be added to reflect member involvement in appointments at Head of Service level. Appendix BV sets out the amendments.

Recommendation 8: to note the alignment of the Terms of Reference of the Appointments Sub Committee and the Head of Paid Service's delegation to reflect member involvement in appointments at Head of Service level.

Proper Officer Schedule

- 2.18 In reviewing other Constitutions, a number make provision for the inclusion of the Proper Officer functions. This is considered to be good practice as it provided a central reference point. Appendix BVI sets out the Schedule.

Recommendation 9: to note the Proper Officer Schedule and to recommend its inclusion in the Constitution to Council

Access to Information Procedure Rules

- 2.19 There has been a recent change in the Access to Information Procedure Rules in relation to authorities which operate executive arrangements. Appendix BVII sets out suggested wording.

Recommendation 10: to note the revised arrangements for Access to Information and to recommend the revised wording to Council

Cabinet Appointment to Outside Bodies

- 2.20 There is one final suggested piece of tidying up. It relates to Cabinet Appointments to Outside Bodies. The Leader is appointed to various bodies because he is Leader. The Constitution currently is implicit that there will be appointments arising from this situation. For completeness, it is suggested that

commentary be included in Part 3.6.2 to reflect that the Council Leader is appointed to certain bodies in his capacity as Leader and list the current ones.

Recommendation 11: to note the Outside Bodies to which the Leader is appointed by virtue of being Leader and to recommend to Council that commentary be added to Part 3.6.2 to reflect this.

- 2.21 In relation to new legislation, the Constitution will need to reflect the Public Services (Social Value Act) which came into force on 31 January 2013.

Social Value

- 2.22 The Best Value Statutory Guidance issued by the DCLG in 2011 reminded local authorities that Best Value decisions should include consideration of social value. Building on that, the Public Service (Social Value) Act 2012, which received Royal Assent on 8 March 2012 and was brought fully into force by a commencement order on 31 January 2013, requires all public bodies to consider how they can improve the economic, social and environmental well-being of their local area through services they procure.
- 2.23 It is clear that the Government has avoided trying to be prescriptive about **how** the consideration of social value should be exercised – not only is the duty merely ‘to consider’, but the Act is not prescriptive on how authorities might consider social value. Nonetheless, the Council should adopt a structured approach to relevant procurement or partnering exercises, not only to ensure that we reduce the risk of challenge, but because driving social value through our external spend can be a powerful way of achieving our local aims and aspirations.
- 2.24 Whilst the Act is not prescriptive about how to consider social value, it is very specific about under what conditions it must be considered, for example public service contracts which are subject to the Public Contracts Regulations 2006. Under the Act social value should also only be considered at the pre-procurement stage, i.e. before commencing a procurement the contracting authority should consider the subject matter of the contract and identify any non-commercial considerations which are relevant and appropriate to be taken into account, e.g., when scoping the project, deciding on packaging, drafting specifications, sustainability and life-cycle requirements and selecting the contract structure. The final specification must, however, be directly linked to the subject matter of the contract, and selection criteria must be non-discriminatory, proportionate and linked to the subject matter of the contract, and in accordance with the criteria listed in the Regulations (where relevant).
- 2.25 There are a number of policy issues to determine here: the first whether to stick within or go beyond the requirements of the Act? Secondly, although the specifics may change for each purchasing exercise, what might we want potentially to include as social value ‘desirables’ in such assessments? And thirdly, where it is legitimate to include Social Value considerations as part of the

selection criteria, what weight should be given to these, to be included as a specific component within the 'quality' element of the assessment exercise?

- 2.26 The Council will need to consider a policy framework for the Council to adopt which seeks to balance:
- the best value duty upon the council to achieve and be seen to achieve value for money;
 - the council's adopted priority of 'Localism'; and
 - the new requirements of the Social Value Act 2012, recently enacted.
- 2.27 To avoid having to report separately to this Committee, it is suggested that once the policy framework has been agreed by the authority then the Monitoring Officer be authorised, after consultation with the Leader, to make any consequential amendments to the Council's Financial Regulations and Contract Standing Orders to reflect the Policy framework introduced as a result of the Public Services (Social Value Act) 2012

Recommendation 12: that once the policy framework has been agreed by the authority, then the Monitoring Officer be authorised, after consultation with the Leader, to make any consequential amendments to the Council's Financial Regulations and Contract Standing Orders to reflect the Policy framework introduced as a result of the Public Services (Social Value Act) 2012

3 Proposal

- 3.1 The Committee is asked to give a view and make recommendations to the Council regarding the points raised in the Background Section to this report.

4 Alternative Options

- 4.1 The report splits out those areas where it has discretion and where there is no discretion. The Committee will need to consider whether it wishes to suggest alternative proposals where this is possible.

5 Consultation Undertaken or Proposed

- 5.1 Given that this is a 'care and maintenance' review of the Constitution it is suggested that it is the role of GPC to consider this. All members do, of course, receive all Council agendas and report and can attend the Committee meeting.

6 Implications

Issue	Implications
Corporate Plan	Having an up to date Constitution is important for good governance

	and decision making.
Financial, Resource and Property	None at this stage it is anticipated that the work arising out of the review will be contained within existing resources.
Legal and Statutory	Where there is a change as a result of legislation or regulation this is set out in the body of the report.
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 – Constitution Review Action Plan
 - Appendix AI-AV –suggested variations to Constitution for issues for member consideration.
 - Appendix BI –BVIII – suggested variations to Constitution where no discretion.

8 Background Papers

- 8.1 None