

Report to: **Council**

Date: **23 May 2024**

Title: **Constitution update**

Portfolio Area: **Governance**

Wards Affected: **All**

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RECOMMENDATIONS:

That Council:

- 1. appoints a co-opted independent member to the Audit and Governance Committee;**
- 2. agrees the proposed changes to the Council's Constitution as set out in Appendix A to the report;**
- 3. adopts the Constitution as amended; and**
- 4. notes that the Monitoring Officer will report further to the Audit and Governance Committee and/or Council on changes to the Contract Procedure Rules required due to the implementation of the Procurement Act 2023 in October 2024.**

1. Executive summary

- 1.1 The Council has a leader and cabinet (the Executive) as its form of governance. This means that the Leader has the power to make decisions unless they are reserved by law to the whole Council or to specific officers. personally, may make the executive decisions personally, but can delegate powers so that decisions are made:
 - (a) collectively by the Executive;
 - (b) by individual Executive members (Portfolio Holders) or a committee of the Executive; or
 - (c) by officers.
- 1.2 The Council has a legal duty to publish an up-to-date Constitution reflecting its governance arrangements and which contains its standing orders, its councillor code of conduct, such information as the Secretary of State directs or that the Council considers appropriate. The Monitoring Officer keeps the Constitution under review and he reports any changes made under his delegated powers or that require Council approval to the annual meeting.

- 1.3 The Monitoring Officer is recommending Council agrees further changes to the Constitution to ensure that it remains up-to-date and relevant. The changes are set out in Appendix A.

2. Background

- 2.1 Under Section 9B of the Local Government Act 2000 there are two permitted forms of governance arrangements for local authorities in England; executive arrangements or a committee system. The Council has agreed executive arrangements in the form of a leader and cabinet (Executive) model.
- 2.2 Under executive arrangements, the full council only has a specific list of powers that are reserved to it for decision. These include important decisions such as:
- (a) approval of the council's annual budget;
 - (b) planning and other major policies;
 - (c) decisions about elections, the constitution, and the conduct of councillors;
 - (d) decisions about staffing and terms and conditions of employment, including the appointment of the Chief Executive; and
 - (e) decisions about individual applications for planning or licensing approval.
- 2.3 The Council may delegate its powers to committees of councillors and to officers, for example decisions about planning and licensing applications.
- 2.4 Committees appointed by the council must be politically balanced, which means that committee membership must seek to reflect the political balance in the council, as far as possible. Political balance is determined by a set of statutory rules that apply to all councils.
- 2.5 Unless the law has reserved a specific power to the full council, the Leader has the power to make any decision. The Leader may make the executive decisions personally but the Leader can delegate powers so that they are made:
- (a) collectively by the Executive;
 - (b) by individual Executive members (Portfolio Holders) or a committee of the Executive; or
 - (c) by officers.

- 2.6 Under executive arrangements the Council must appoint at least one overview and scrutiny committee. The Council has one Overview and Scrutiny Committee which has specific powers to review policy and the decisions of the Leader and the Executive and may require the Leader and Portfolio Holders to attend at its meetings to answer questions.
- 2.7 The Overview and Scrutiny Committee may “call in” an executive decision after it has been made, which means that the decision cannot be implemented until the committee has reviewed the decision and if it chooses to, can require a decision to be re-considered. The Committee cannot, however, block or veto an executive decision.
- 2.8 Section 9P of the Local Government Act 2000 requires the Council to prepare and keep up to date a document, to be known as the Constitution, which contains:
- (a) a copy of the authority's standing orders for the time being;
 - (b) a copy of the authority's code of conduct;
 - (c) such information as the Secretary of State may direct; and
 - (d) such other information (if any) as the authority considers appropriate
- 2.9 The Council completed a review of the Constitution in July 2022 (Mins 8/22 and 25/22 refer). The Council publishes the constitution on the Council’s website at <https://southhams.gov.uk/constitution>.
- 2.10 Normally, the Audit and Governance Committee would consider changes to the Constitution and the Committee would make a recommendation to Council. However, this was not possible due to the Monitoring Officer’s absence in February/March this year. The Monitoring Officer has since consulted with the Executive Member - Economic Development, Commercial Strategy and Governance who has agreed that this report should be brought directly to Council.

3. The changes

- 3.1 Appendix A sets out the changes recommended by the Monitoring Officer. A significant number reflect legislative changes for example, the re-designation of areas of outstanding natural beauty as national landscapes, or committee decisions, but other changes have been made to accommodate a wish among councillors for an opportunity for broader debate and public participation in decision-making, for example, to notices of motion and public questions.
- 3.2 Changes are also made to reflect the outcome of the independent review by Sir Tony Redmond into the effectiveness of external audit and transparency of financial reporting in local authorities. The

review proposed legislating for at least one Independent Member, suitably qualified, to be appointed to audit committees. Considering this, the Chartered Institute of Public Finance and Accountancy (CIPFA) has issued guidance advising that "The Audit Committees of Local Authorities should include co-opted independent members in accordance with the appropriate legislation." The actual appointment and the allowance to be paid is considered elsewhere on the agenda.

- 3.3 There are additional delegations to officers required, for example, to make orders for temporary appointments under section 91 of the Local Government Act 1972 where there are so many vacancies in the office of parish councillor, that a parish council is no longer able to act. The delegations also reflect legislative changes such as the power to agree the terms of agreements for biodiversity gain habitat banks. These latter two powers are conditional on consultation with the councillors specified.
- 3.4 Finally, the opportunity has been taken to clarify the terms of delegated powers, for example to exempt applications non-material amendments from the list of exclusions to the Head of Development Management's delegated powers. Equally, clarity is now provided over the process for approving variations to section 106 agreements.

4. Prospective further changes

- 4.1 Public Contracts Regulations 2015 and their predecessor regulations gave effect to EU procurement law. As a contracting authority, the Council must comply with the 2015 Regulations when it procures goods, services, and supplies. Since Brexit in January 2021, EU procurement law has no longer applied directly to the UK and the Government viewed this as an opportunity to reform UK's public procurement regulations to reduce red tape and to support business by simplifying public sector procurement, encouraging innovation, and improving transparency.
- 4.2 Proposals were initially set out in a green paper on transforming public procurement issued in December 2020 with the consultation on these proposals held open till 10 March 2021.
- 4.3 The number of responses received as part of the consultation delayed publication of the Government's response until December 2021. Although the Government first announced its intention for a Procurement Bill in the Queen's speech 2021, the Bill's progress through Parliament was slow and it only received Royal Assent on 23 October 2023.
- 4.4 The Procurement Act 2023 provides a framework with the detail being set out in regulations that commentators expect to be in force from 28 October 2024 onwards. There will be transitional arrangements in place depending on when the Council starts a

procurement, so if started before the implementation date, the 2015 Regulations will apply until the contract has terminated, otherwise the 2023 Act will regulate the procurement.

- 4.5 The areas of change with the most significant impact are likely to be:
 - 4.5.1 Transparency: a significant expansion in the number of notices that an authority will need to publish about the procurement.
 - 4.5.2 Procurement processes: new flexibilities to design bespoke procurement processes.
 - 4.5.3 Contract performance: a new requirement for all authorities to set and publicly report on KPIs for larger contracts valued at over £5 million.
 - 4.5.4 Supplier debarment: will be possible where a contractor triggers mandatory or discretionary exclusion criteria.
 - 4.5.5 New language: the Act uses new language to describe familiar concepts (for example, "selection criteria" will be known as "conditions of participation" under the Act).
- 4.6 Subject to timescales allowing, the intention is that the Audit and Governance Committee will consider draft amendments to ensure that the Constitution reflects these changes, and the Committee will recommend to Council.

5. Proposal and Next Steps

- 5.1 The Monitoring Officer is asking Council to agree the proposed changes and to adopt the amended Constitution for the municipal year. The Council will then publish the Constitution on the Council's website.
- 5.2 The Monitoring Officer will monitor the progress of the roll-out of the Procurement Act 2023 with a view to reporting to the Audit and Governance Committee with draft proposals for revised Contract Procedure Rules. Government actions will affect the timing of the report including the timing of a General Election.

6. Options available and consideration of risk:

- 6.1 Council could decide not to agree the changes or not to adopt the Constitution. The risk would be that those affected by any action taken by committees and officers would argue that the action was unlawful. This would result in legal challenges to those actions and risk reputational damage.

7. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	These are set out in the report at paragraphs 2.1-2.7 and 6.1
Financial implications to include reference to value for money.	N	
Risk	Y	These are set out in the report at paragraph 6.1
Supporting Corporate Strategy	Y	Having an up-to-date Constitution supports the Council Plan by setting out transparently how the Council operates, how the Council makes its decisions and the procedures the Council will follow.
Consultation & Engagement Strategy	N	
Climate Change - Carbon / Biodiversity Impact	N	
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A: Proposed changes.

Background Papers:

There are none.