

# **Cabinet**

**7 December 2021**

## **Constitution Review**

### **Recommendation(s)**

That Cabinet endorses the changes to the Constitution, Contract Standing Orders and Financial Regulations and recommends them to Council for approval

#### **1. Executive Summary**

- 1.1 The Council is required by legislation (s37 Local Government Act 2000) to have a constitution which sets out the governance arrangements by which the Council will operate. The Constitution must contain (a) a copy of the authority's standing orders for the time being, (b) a copy of the authority's code of conduct for the time being, and (c) such other information as the authority considers appropriate.
- 1.2 Following the commencement of the 2021/22 municipal year officers have undertaken a review of the Constitution with particular concentration on the scheme of delegation, contract standing orders and financial regulations.
- 1.3 The Constitution provides the basis on which the Council operates and where powers are to be exercised and decisions taken. Contract Standing Orders set out the procedures under which the Council procures (and provides) works, goods and services to ensure that it achieves value for money and social value, that it complies with statutory requirements and that its purchasing is prudently managed and properly controlled. Financial Regulations set out financial roles and responsibilities and provide the framework for financial decision making.
- 1.4 The existing Constitution, Contract Standing Orders and Financial Regulations are legally compliant. However, there are areas which would benefit from providing greater clarity and updating to ensure the Constitution remains fit for purpose and provides appropriate and robust governance. As a consequence, a number of changes are proposed. These are set out in full in track changes at Appendix 2a (Constitution) and Appendix 2(b) (Contract Standing Orders) to show changes between the existing versions and the proposed updated versions. Appendix 3 constitutes the proposed changes to Financial Regulations. It has not been possible to produce these in redlined format. A summary of the key changes within the main body of the Constitution is provided at Appendix 1 for ease of reference.

## **2. Key changes to the Constitution**

- 2.1 The key changes within the Constitution are set out in more detail below and summarised in Appendix 1. Overall the proposed changes are intended to ensure that the scheme of delegation is clear, that the Constitution is up to date in terms of its terminology and statutory references and that the Council is able to undertake its business in the most effective and efficient way.
- 2.2 The proposed changes include
- 2.2.1 Delegating to officers the ability in consultation with the relevant Portfolio Holder the ability to make applications for grant funding/ external bids where the value of the bid does not exceed £250,000 and the bid does not commit the Council to funding in excess of £50,000 and provided that the match funding can be met from the service's allocated budget, and/or it relates to an approved partnership submission, and/or it relates to a project/activity for which prior member approval has been received. This is to reflect the often short timeframes for external bidding opportunities and will enable the Council to respond more swiftly to such opportunities. Above these thresholds Portfolio Holder approval is still required as currently.
  - 2.2.2 A similar change in relation to responses to external consultations where the response is practical/technical in nature and is not of wider interest. It is proposed that this power will be delegated to officers to be exercised in consultation with the Leader and/or Portfolio Holder and the Chair of the relevant Overview and Scrutiny Committee.
  - 2.2.3 Reflecting on our experiences of the Covid pandemic and the need often during that period to operate decisively and swiftly, a new delegation is proposed, giving power to the Chief Executive, in consultation with the Leader, the Group Leaders and relevant Portfolio Holder to make urgent decisions in emergency situations. In proposing this new power we have considered the approach of a number of other Councils whose Constitutions already contain a similar power. The power is time limited to the period of the emergency and details of use of this power will be included in the Leader's annual report to full council. In addition, the relevant decision making body will be notified at the next appropriate meeting.
  - 2.2.4 The Policy Framework which contains those policies, strategies or plans which must be approved by full Council by law, and such others as the Council decides, has been reviewed and updated to reflect changes in legislation and changes in practice. A new strategy is proposed for inclusion (Warwickshire Children and Young People Strategy) and policies which no longer exist or have been subsumed into other policies or procedures are proposed for deletion to reflect current practice (eg some sub-regional strategies).

- 2.2.5 A proposed uplift to the delegation to the Strategic Director for Resources in relation to leases and sales/acquisitions of land, given that these levels they have not been updated for a number of years. The proposal is that the Strategic Director for Resources may grant or take on leases up to £35,000 per annum (currently £25,000 per annum) based upon an RPI uplift calculation and may authorise sales at market value or purchases where the consideration is no greater than £250,000 (currently£100,000). This reflects the realities of land values and the need to move in an agile way to deliver the Council's place agenda. Consequent changes have been made to the Portfolio Holder levels.
- 2.2.6 There have been a small number of uplifts to financial limits regarding write offs (raising the Strategic Director for Resources' limit from £2,000 to £3,000 and Strategic Directors from £1,000 to £2,000) with corresponding changes to Portfolio Holders' lower limits (now £3,000). There is also a proposed uplift to the Strategic Director of People's ability to make payments in certain circumstances to children in need, voluntary organisations providing care support and disabled persons. These have risen from £1,000 to £10,000.
- 2.2.7 The officer delegations in the main body of the Constitution (Part 2(10)) have been simplified in terms of their presentation, with the detailed delegation tables moved into an appendix. It is important that these are retained however the move will enable updates to specific delegated powers to be undertaken without a need to redraft and republish large sections of the Constitution and enables a broader understanding of the delegated powers of named officers. Some minor additions to this section are proposed providing clarity as to the requirements on officers when they are exercising delegated powers, their ability to onwards delegate and the limitations on their exercise of such powers. The issue of interpretation of any specific delegation remains within the role of the Monitoring Officer. Statutory references have been updated to ensure all remain accurate. This is an ongoing activity that will be within the remit of Legal Services to undertake as required in consultation with the Monitoring Officer.
- 2.2.8 A general delegation is proposed to the Strategic Director of Communities in relation to decisions in the planning and highways area. This delegation is implicit in the current version of the Constitution and has been made explicit in the interests of clarity and effective decision making and it remains subject to specific exclusions.
- 2.2.9 The opportunity has also been taken to clarify the delegation of certain functions to specific officer roles at a Constitutional level. These include the Proper Officers for Registration and for Health Protection (Notification) Regulations in particular.
- 2.2.10 There are also a number of more minor changes included to correct and update the Constitution following prior decisions of Council and

structural and legislative changes. These are all detailed in Appendix 2a, along with the changes above, in track changes.

### **3. Key Changes to Contract Standing Orders**

- 3.1 The proposed changes to Contract Standing Orders are set out in Appendix 2b. There are no major changes to procedures and no alteration to limits of authority or sign off, however the opportunity has been taken to simplify language and to restructure the document to follow the life cycle of a procurement activity. The changes were considered and endorsed by the Audit and Standards Committee at its meeting on 4th November 2021.
- 3.2 The main changes to Contract Standing Orders are set out below expanding on the purpose and importance of CSOs to provide context to the rules and linking to Financial Regulations
  - 3.2.1 clarification of (i) requirements where a joint procurement with partners is undertaken (ii) the extent and primacy of procurement legislation and the requirement not to disaggregate when valuing contracts (iii) when CSOs apply (iv) exemption requirements (v) use of frameworks (vi) base requirements for any contract in terms of drafting (vii) requirements of the Social Value Act (viii) the term “consultant” (ix) requirements for external service delivery (x) requirements on disposal of goods/assets by auction
  - 3.2.2 highlighting the role of officers in a procurement and transparency requirements and consistency of information to be provided fairly to all bidders
  - 3.2.3 providing context to preparing for a procurement and how to commence purchasing activity updated in light of EU exit
  - 3.2.4 confirming the need for legal advice on extension or amendment of a contract
  - 3.2.5 confirming the Council’s move to electronic signatures using DocuSign where legally permitted,
  - 3.2.6 updating requirements for record keeping and reporting requirements in light of EU exit
  - 3.2.7 raising the threshold level for one quote to below £25,000 (currently £10,000) and for three quotes to from £25,000 to below £100,000 (currently £10,000 to below £100,000)

## 4. Key Changes to Financial Regulations

- 4.1 During the same period, a review of Financial Regulations has been undertaken, with the proposed revisions set out at Appendix 3. Amendments have been made to reflect changes to the operating model pre Covid and to strengthen the position with regard to accountability and responsibility at the various management levels.
- 4.2 In proposing amendments to the Financial Regulations, the following points are of note:
  - 4.2.1 The broad structure remains as previously approved, with a set of high-level financial regulations supplemented by the more detailed financial rules. The regulations require approval by full Council, with the finance rules delegated to the Chief Financial Officer (Strategic Director for Resources) to issue and maintain.
  - 4.2.2 The proposed revisions are more comprehensive and provide more detail on why the rules are important to strengthen the organisational understanding of financial governance. They also clearly set out the roles of internal and external audit.
  - 4.2.3 The definition of value for money has been updated to reflect the definition used by external auditors as part of the value for money assessment.
  - 4.2.4 The role of the Chief Financial Officer (Strategic Director for Resources) has been updated to reflect CIPFA guidance on the role of the S151 officer in local government;
  - 4.2.5 The dates by which draft/final accounts need to be published have been updated in light of recent changes;
  - 4.2.6 Proposals are made with respect to Virements. Virements cover moving money between services, moving money within a service and changing how the money is spent. The proposal is that Assistant Directors must seek Cabinet approval for all virements within their service area which exceed the lower of £500,000 or 5% of the Service's net revenue budget (whether individual or as part of a cumulative total) where this is as a result of a change in policy, and seek Cabinet approval for all virements between Services irrespective of the amount of the virement, except where virements do not change the approved use of the resource;
  - 4.2.7 The appendix to the Financial Regulations contains the list of Finance Rules. These are delegated to the Chief Finance Officer to update, finalise and approve. This exercise is intended to complete by 1 April 2022, and changes will be rolled out on a phased basis over the intervening period.

## **5. Conclusions**

- 5.1 The changes to the Constitution aim to simplify presentation and understanding without changing the balance between member and officer decision making, and to update language and terminology in some areas to reflect changes in legislation, practice and operating arrangements. Where new powers or provisions are proposed they include safeguards to the exercise of those powers and are consistent with the approach adopted in other areas of the Constitution.
- 5.2 Further work will be needed to Contract Standing Orders in the future as the response to the procurement reform consultation is taken forward. Despite this it is considered appropriate that current changes across all aspects of the Constitution (including Contract Standing Orders and Financial Regulations) are progressed at this time, with any future legislative changes picked up as they arise.
- 5.3 Changes to the Member Code of Conduct were approved by the full Council in July 2021 and have been incorporated into the Constitution. The Members Allowance Scheme is currently under review and when any proposed changes have been approved by full Council the Scheme, which also forms part of the Constitution, will be updated.
- 5.4 It remains the position as in previous iterations of the Constitution, and has been made explicit, that minor/technical changes to the Constitution be within the delegated powers of the Monitoring Officer and the Chief Financial Officer to make. Any necessary changes to statutory references and any changes resulting from changes in legislation, annual Council or other member decisions will be reviewed annually within legal services and changes approved by the Monitoring Officer.

## **6. Financial Implications**

- 6.1 There are no direct financial implications arising from this report.
- 6.2 The changes proposed do not fundamentally alter the balance between officer and member decision making, focussing as they do on lower value officer authorisations and maintaining the need for consultation with the relevant Portfolio Holder and/or the Leader and other members as appropriate where additional delegations have been proposed.

## **7. Environmental Implications**

- 7.1 There are no direct environmental implications to this report.

## **8. Supporting Information**

- 8.1 None

## 9. Timescales associated with the decision and next steps

- 9.1 If approved the proposals will be taken to full council in December for approval.

### Appendices

1. Appendix 1 - Summary Table of Key Constitutional Changes
2. Appendix 2 –Redlined version of (2a) Constitution and (2b) Contract Standing Orders
3. Appendix 3 – Revised Financial Regulations

### Background Papers

1. none

	<b>Name</b>	<b>Contact Information</b>
Report Author	Strategy and Commissioning Manager Legal and Democratic	nicholavine@warwickshire.gov.uk
Assistant Director	Assistant Director Governance and Policy	sarahduxbury@warwickshire.gov.uk
Strategic Director	Strategic Director for Resources	robpowell@warwickshire.gov.uk
Portfolio Holder	Portfolio Holder for Customer & Transformation	cllrjenns@warwickshire.gov.uk

Appendix 1 to this report containing the summary of key changes was circulated to the following members prior to publication:

Local Members: n/a

Other Members:

Cllr Butlin  
Cllr Chilvers  
Cllr Holland  
Cllr Roodhouse  
Cllr Seccombe