



Amendments to and development of the Constitution

Report of the Monitoring Officer

Report to:	Council
Meeting date:	15 July 2021
Ward(s):	All
Key Decision:	No
Appendix 1:	Amendments to the Constitution
Appendix 2:	Update to Contract Standing Orders post exit from the EU.
Appendix 3:	Amendment to the Councillor Code of Conduct
Papers relied on:	N/A

Recommendation to Council:

- 1. That Council endorse the amendments to the constitution proposed in Appendix 1 of this report in order to ensure that the Council's constitution remains up to date and effective.**
- 2. That Council adopt the Contract Standing Orders in Appendix 2 of this report to take into account technical changes following Britain's exit from the EU, accepting the amendments highlighted in 2.3 of this report.**
- 3. That Council adopt the amendments highlighted in 2.4 of this report to reflect new Cabinet Portfolio positions.**
- 4. That Council adopt the proposed amendments to the Councillor's Code of Conduct in Appendix 3.**
- 5. That Council notes the detail of the constitution review and agrees to the appointment of the Constitution Working Group with membership to be agreed by Group Leaders as outlined in 3.8 of this report**

Background, corporate objectives and priorities

The Council has a duty to keep its constitution under review. This includes all relevant codes and protocols, and the procedure rules for committees. This includes corrections, updates, amendments and developments to the constitution.

The constitution forms a key part of the Council's governance framework, setting rules, principles and procedures to enable the Council to take decisions and do its work effectively.

This report proposes amendments to the constitution in order to ensure that it is up to date and provides details of a constitution review supported by a Councillor Constitution Working Group.

Glossary of terms

Term	Definition
Code of Conduct	This is the Councillor’s Code of Conduct adopted by Basingstoke and Deane Borough Council (“the Council”) pursuant to its statutory duty to promote and maintain high standards of conduct by Councillors and co – opted members of the Council.
Constitution	Document that sets out how the Council operates and makes decisions.
Contract Standing Orders	Legal framework under which the Council will enter into contracts for work, goods and services.
DPI	Disclosable Pecuniary Interest as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Main considerations

1 Executive Summary

- 1.1 It is a statutory duty for the Council to maintain and keep under review a constitution which must comply with the provisions of the Local Government Act 2000, regulations made under it and Directions issued by the Secretary of State as to its contents. It is also a requirement of our existing constitution that its provisions be periodically reviewed.
- 1.2 The constitution requires a review to make the content more accessible and fit-for-purpose, reflecting the core values of Basingstoke & Deane Borough Council.
- 1.3 A prime objective of a good local authority is to have an accessible and modern constitution. The constitution should be seen as a “living” document— i.e. not something which is set in stone for all time, but something which is kept under regular review and which the Council is willing to adjust or clarify in the light of new or changing circumstances.
- 1.4 This report seeks endorsement for a number of amendments to the existing constitution and seeks to update the Contract Standing Orders to take account of Britain’s exit from the EU. The report also provides details of a review of the constitution that will take place in 2021/22 with the support of an elected member Constitution Working Group.
- 1.5 The report further seeks to ensure that the Council’s Code of Conduct is amended to ensure that it is accurate and consistent with the Localism Act 2011 and current Government Guidance.
- 1.6 The constitution should be “owned” by the whole Council—i.e. not something which is under the control of the largest group or any other part of the Council but something in which the whole Council has a genuine interest.
- 1.7 Having a constitution which is reviewed and updated regularly serves a valuable and relevant purpose by striking a fair balance between the interests of the various groups within the Council—e.g., between the largest political group and opposition groups, between frontbenchers and backbenchers and between Councillors and officers.

2 Amendments to the Constitution

- 2.1 The Monitoring Officer has a responsibility to keep the constitution under continuous review and to ensure that it is kept up to date and fit for purpose. The current constitution has not undergone significant review for some time and needs updating.
- 2.2 The Monitoring Officer has authority under 3.13 of the constitution to maintain an up to date version of the constitution, this allows minor amendments to be made as required. Initial amendments to the constitution are detailed in Appendix 1.
- 2.3 Following Britain's exit from the EU the Council's Contract Standing Orders require amendment to take account of post-Brexit requirements and to ensure they take into account the Council's Procurement and Contract Management Strategy. The proposed Contract Standing Orders are attached at Appendix 2 with track changes detailed in orange.
- 2.4 The Council's decision-making procedures allow executive powers to be exercised by the Leader, the Cabinet or in some cases by individual portfolio holders. All executive powers vest in the Leader who may delegate the exercise of executive powers as set out in Article 7 of the constitution. Following the election, the Leader has set out new portfolio positions, as a result the following corrections detailed in the table below are required to reflect the portfolio changes:

Page:	Amendment/ Addition:
2.17	6.5 – Proceedings of the Scrutiny and Policy Committees Service areas need to be amended to reflect the change in Cabinet Portfolios
3.22	2.8 The Cabinet 12) Change in title - Cabinet Member for Finance, Service Delivery and Improvement and Major Projects
3.24	2.9.1 Functions of the Manydown Executive Committee 2) c) Change in title - Cabinet Member for Communities , Planning and Infrastructure
3.25	2.9.2 Functions of the Basing View Executive Committee 7) Change in title – Cabinet Member for Economic Development Strategy

- 2.5 All Councils are required to have a local Member Code of Conduct. The Council's current Code was adopted by the Council in 2013 and was last revised in October 2018. Any revision to the Council's existing Code of Conduct or adoption of the new model code would need to be approved by Council. Standards Committee makes recommendations to Council on this.
- 2.6 On 12 July 2021 the Standards Committee was asked to agree that the Local Government Association Model Councillor Code of Conduct be referred to the Constitution Working Group for consideration with the views of the Standards Committee.
- 2.7 The Standards Committee was also asked to recommend to Council the adoption of immediate amendments to the Code of Conduct as detailed in Appendix 3.

- 2.8 In the existing Code of Conduct there is provision in paragraph 11 of the Code that where a councillor has a Disclosable Pecuniary Interest (DPI) or special interest in any business the councillor “ may attend a meeting...but only for the purpose of making representations, answering questions or giving evidence in relation to the business, provided that that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise”.
- 2.9 This is incorrect, and the position should be that where a councillor has a DPI or special interest in an item they should leave the room and have no speaking rights.
- 2.10 Under the Localism Act 2011 where a councillor has a DPI in a matter they cannot participate in any discussion of a matter or vote unless they have been granted a dispensation by the Monitoring Officer. If this occurs without reasonable excuse it is a criminal offence.
- 2.11 This is also consistent with Government Guidance issued on the matter in 2013.
- 2.12 The proposed amendment to the Code to rectify this position is contained in Appendix 3 and the Council is requested to approve the amendment as recommended to do so by Standards Committee.
- 2.13 Full Council is requested to endorse Appendix 1, 2 and 3 to ensure these elements of the constitution are up to date.

3 Keeping the constitution under review

- 3.1 The constitution is a key document which supports the council’s operation, decision-making and seeks to ensure efficient governance. It is important that it is accessible to councillors, officers, partners and the public.
- 3.2 There are a number of future changes that will be required to the constitution in the coming municipal year. Prior to the local election the Standards committee considered a report on updating the Members Code of Conduct, this follows the development of a new model Code by the Local Government Association in response to the review of local government ethical standards undertaken by the Committee on Standards in Public Life in 2019.
- 3.3 Work is also underway preparing Social Media guidance for Councillors which it is proposed will form part of the constitution.
- 3.4 The current constitution has a number of inconsistencies within it regarding delegations, decision-making and within various terms of reference.
- 3.5 The constitution must enable the Council to operate effectively and the review will seek to ensure that it:
 - is "fit for purpose" and "understandable" by Councillors, Officers, Partners and the public
 - is "locally driven" and reflects the values and culture of Basingstoke & Deane Council.
 - reviews the terms of reference of existing Committees and ensure that their role is clear, effective and contributes positively to local democratic principles
 - develops the scheme of delegations to aid effective decision-making within the policy & budget framework set by elected members
 - seeks to remove any ambiguity and make roles of Committees explicit avoiding any duplication (for example clear Cabinet Member remits and delegations and clear scrutiny arrangements)
 - promotes accountability of decision-making

- learns from best practice examples
- ensures that users & stakeholders have been appropriately consulted about the changes

3.7 The constitution review will be assisted by a Constitution Working Group of Councillors, who will consider options and proposals in order to advise the review and the development of the constitution. Discussions have taken place with Group leaders to shape the terms of reference and to seek membership of this group. Membership of the Working Group will consist of representatives from each political group together with officers including the Monitoring Officer (or Deputy), the Executive Director of Corporate Services or Chief Executive as appropriate.

4 Options Analysis

4.1 Under provisions contained within the Local Government Act 2000 (and as subsequently amended) the Council is required to prepare and maintain a constitution.

Corporate implications

5 Legal

5.1 The Local Authority is under a duty to prepare and keep up to date its constitution under s9P Local Government Act 2000.

6 Financial

6.1 There are no expected additional costs arising from the undertaking the review of the constitution. Any ongoing financial implications, identified as part of undertaking the review, will be considered as part of future updates of the Medium Term Financial Strategy.

7 Risk management

7.1 A risk assessment has been completed in accordance with the council's risk management process and has identified no significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

8 Equalities

8.1 When considering the impact of the proposed changes to the Constitution on the protected characteristics groups and implications for the Public Sector Equality Duty, it can be concluded they will have a neutral impact on all groups and no issues have been identified.

9 Consultation and communication

9.1 Councillors will be engaged as part of the project to review the Council's constitution through the Constitution Working Group and will be regularly updated. Following the review of the Constitution, a communications plan for officers and councillors will be implemented to promote the changes if agreed by Council.

10 Climate change

10.1 There are no climate change implications as a result of the proposed changes.

11 HR Conclusion

11.1 There are no staffing implications arising from the recommendations.

12 Summary and reason for the decision

12.1 Approval of this report and Appendix 1, 2 and 3 will correct highlighted areas within the Constitution that have been identified as requiring correction.

13 The options considered and rejected

13.1 To not undertake a review of the Constitution.

Date: 15 July 2021 Decision taken by: Council
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Version	Final
Dated	July 2021
Status	Open
Confidentiality	It is considered that information contained within this report (<i>and appendices</i>) does not contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore can be made public.