

Council	
Meeting Date	27 April 2022
Report Title	Change of governance model: Updates to Parts 1 to 3 of the constitution
Cabinet Member	Cllr Baldock – Deputy Leader (Cabinet Member for Constitutional Reform)
SMT Lead	David Clifford – Head of Policy, Governance and Customer Services (Monitoring Officer)
Head of Service	
Lead Officer	
Key Decision	No
Classification	Open
Recommendations	Council is asked to: <ol style="list-style-type: none"> 1. Adopt the text at Appendices I to X as Parts 1 to 3 of the updated constitution, to come into effect at annual council in May 2022. 2. Give delegated authority to the monitoring officer, in consultation with the council leader, to make minor changes to the constitution aimed at rectifying typographical, formatting or paragraph numbering errors, or to resolve any residual references to the executive model.

1 Purpose of Report and Executive Summary

- 1.1 Following council consideration of Parts 1 and 2 of the updated constitution at its March meeting, this report updates council on the work of the cross-party constitution working group since March, and asks council to adopt the text at Appendices I to X as Parts 1 to 3 of the updated constitution, giving effect to the decision to move to the committee system from May.

2 Background

- 2.1 Council voted unanimously in October to move to a committee system of governance from the 2022/23 municipal year. At the same meeting, council requested the cross-party working group which had been established to consider this governance change to continue its work in overseeing the detail of the new governance model. The working group comprises Cllrs Baldock (chair), Bonney, Darby, Ingleton, Martin, Simmons, Truelove and Valentine.
- 2.2 A guiding principle for the working group has been for the updated constitution to be as concise and as coherent as possible. Among other things, this implies that

all the rules governing a particular meeting or process should be located in the same place – at least to the extent that this is possible. In practice, this has meant that in addition to making substantive changes to the way meetings and processes work as a consequence of the new governance model, the working group has also agreed to move some elements of the constitution around within the document, without materially changing what those elements say.

- 2.3 As the April extraordinary council meeting will be the last council before the new constitution comes into effect in May, it is necessary that the version of the constitution at Appendices I to X is adopted at this juncture in order that lawful decision-making can continue into the new municipal year. However, this does not mean that further revisions will not be possible.
- 2.4 The working group has established a list of areas where further refinement and improvement of the constitution may be desirable, and has agreed to turn its attention to those once the more urgent work of incorporating the governance change is completed. In addition to this, in regard specifically to the new committee system, the intention is for the working group to review the effectiveness of these arrangements after the first two cycles of committee meetings in the autumn. Any further changes proposed by the working group will be brought to council in due course.

3 Proposals

- 3.1 The text at Appendices I to X is intended to replace Parts 1 to 4 of the current constitution as the new Parts 1 to 3. The working group gave very detailed consideration to this text at its meetings on 18 March, 4 April and 12 April, and Parts 1 and 2 (Appendices I and II) were agreed by council, with some slight amends which have now been incorporated, at its meeting on 30 March. This includes clarification that both the policy and resources committee and other service committees can establish working groups as well as formal subcommittees.
- 3.2 Other points raised at council in March included a possible need to review officer delegations and a question about whether a subcommittee of the housing and health committee was the best format for the Swale Rainbow Homes shareholder representation panel.
- 3.3 The working group's list of areas for further refinement includes the scheme of officer delegation, which could probably be made more concise without materially affecting its operation, and this is likely to be picked up early in the new municipal year. At its 4 April meeting, the working group further considered the shareholder representation panel and concluded that on balance a subcommittee of the housing and health committee remained the most workable arrangement.
- 3.4 The remaining sections of the updated constitution which council has not previously seen comprise the new Part 3 (previously Part 4), consisting of the council and committee procedure rules and a series of thematic procedure rules covering how specific functions are to be carried out. As with the changes to

Parts 1 and 2, the proposed amendments to Part 3 are largely in consequence of the change to the governance model, and as would be expected, this change has necessitated fewer amendments to these procedure rules than was the case for the new Part 2, which covers committees' responsibility for functions.

- 3.5 In addition to these consequential amends, the working group has taken the opportunity to rationalise the order in which rules appear in a number of sections to make those sections more immediately comprehensible, but has also proposed a small number of more significant amendments, not all of which are strictly consequential on the change of governance model. These are outlined in the paragraphs below. The working group also agreed to standardise the use of 'chair' rather than 'chairman' and 'they' rather than 'she', 'he', or 'he/she' throughout the document.

Council and committee procedure rules (Appendices III, IV and V)

- 3.6 As members would expect, the change of governance model does not necessitate far-reaching amendments to the council procedure rules, and the proposals of the working group set out in the appendices and below do not generally include anything which would materially affect the way council and committee meetings operate. However, some changes are proposed in connection with the principles of concision, coherence and non-duplication.
- 3.7 Most of the rules contained in the current council procedure rules also apply to committees, but the rule which states this is rather buried towards the end of the document. In line with the coherence principle and the working group's objective to ensure that as far as possible all the rules governing a meeting or a function are to be found in the same part of the constitution, the applicability of each rule to committees has been made more explicit (by means of the introductory note at 3.1.0 and the use of asterisks to denote rules which only apply to council), and a number of previously separate sets of procedure rules have either been incorporated into what are now the council and committee procedure rules or appended to them as an annex.
- 3.8 This is the case for the public participation procedure rules (previously Part 4.9 of the constitution), which have been incorporated into the main body of the council and committee procedure rules. The petitions scheme, which was formerly part of the public participation rules, has become an appendix to the main rules, and is on the working group's list of areas for possible further refinement in the new municipal year. While the council is no longer under a legal obligation to have a petitions scheme, it probably makes sense to retain one, but the current scheme is arguably more complicated than it needs to be.
- 3.9 The joint transportation board procedure rules have also become an appendix to the council and committee procedure rules. These are shared between SBC and KCC, and cannot be amended without agreement from both councils. With this in mind, the only change which has been made is to replace the reference in Rule 8.2 to the Swale executive with a reference to the relevant Swale service

committee (or its chair). The KCC monitoring officer has been advised of this unavoidable change.

- 3.10 The final appendix to the council and committee procedure rules is the set of rules governing standards hearings by the standards committee or its subcommittee. These are unchanged from the current constitution, and are therefore not reproduced in the appendices to this report, but council will want to note the work currently being undertaken by the standards working group on updating the code of conduct, which may result in changes being proposed on these procedure rules. More information about this work is provided in paragraph 3.23 below.
- 3.11 The only substantive change to the way in which the council and committee procedure rules work is that Rule 3.1.14.1 has been amended so that once a council agenda has the maximum two motions on it, no further motions can be submitted to the proper officer until the close of that council meeting. These further motions would formerly have been added to future council agendas. This change, which is intended to prevent a situation in which one member or one group has filled the available slots for motions for any number of upcoming council meetings, was unanimously supported by the working group.

Access to information procedure rules (Appendix VI)

- 3.12 The access to information rules at Appendix VI have been updated with amendments consequential on the change of governance model, which have included the deletion of long sections covering cabinet and scrutiny. At its meeting on 12 April the working group discussed the remaining rules in some detail but eventually decided not to propose any further changes.

Budget and policy framework procedure rules (Appendix VII)

- 3.13 The primary purpose of the budget and policy framework procedure rules has previously been to ensure that council defines a clear budget and policy framework within which the cabinet can take executive decisions, with anything falling outside that framework needing to be referred back to council.
- 3.14 Something akin to this needs to be retained in the committee system, and the rules at Appendix III have therefore been updated with amendments consequential on the change of governance model, with references to cabinet being replaced with references to policy and resources committee or service committees as appropriate, and sections which were largely or exclusively about cabinet and scrutiny being simplified or deleted as appropriate.
- 3.15 In line with the principles of concision, coherence and non-duplication which the working group has tried to adopt throughout the constitution review process, a section on virement has been incorporated into the financial procedure rules, with a reference to those rules being added into the budget and policy framework rules in its place.

Officer employment procedure rules (Appendix VIII)

- 3.16 The officer employment procedure rules cover both the recruitment and appointment of senior officers and the disciplinary processes which apply to statutory officers. Members will recall from the discussion of Part 2 of the updated constitution at council on 30 March that two new subcommittees of the policy and resources committee are established in Section 2.2 of the updated constitution (an investigation and disciplinary subcommittee and a statutory officer disciplinary appeals subcommittee), in addition to the existing appointments subcommittee.
- 3.17 This is to take account of recent changes to the legal provisions on senior officer disciplinary matters, and these changes are also reflected in the second half of the updated procedure rules at Appendix VIII. These describe the new procedures which the new subcommittees will need to adopt, and are a reflection of the up-to-date legal position. This does mark a material change from the current rules which is not consequential on the change of governance model, but it is one which legally the council has little choice but to adopt.
- 3.18 The first half of the officer employment rules at Appendix VIII, dealing with the recruitment and appointment primarily of senior officers, remains robust and has therefore not undergone significant change. However, the working group has proposed the reordering of some of the clauses as a means of rationalising the way the rules work in conjunction with each other and of making them more readily understandable to members and officers seeking to apply them.

Financial procedure rules (Appendix IX)

- 3.19 The financial regulations at Appendix IX have been reviewed not only by the working group but also the director of resources, who attended the working group meeting on 12 April. In addition to the usual unavoidable amendments in consequence of the change of governance model, the working group agreed to amend Section A3 of the appendix to these regulations, covering virements.
- 3.20 Members will recall that the section on virements deals with transfers of funds from one budget line to another budget line, either within a single manager's budget or across budgets held by different managers. Virements above £40,000 (revenue) or £50,000 (capital) can currently be approved by the relevant cabinet member. In the absence of individual member decision-making in the new system, the only body which can take the place of the cabinet member is the policy and resources committee.
- 3.21 The working group agreed that leaving the limits on virements which can be approved without a committee decision at these relatively low levels could present real issues in cases where decisions are needed quickly, and have therefore proposed increasing the limit at which the chief executive can take such decisions (with the approval of the director of resources) to £100,000 for both revenue and capital.

Contract standing orders (Appendix X)

- 3.22 The contract standing orders underwent a thorough review in late 2020, so the working group has made only the most unavoidable updates in consequence of the change of governance model. This has effectively been limited to the replacement of references to cabinet members with references to chairs of relevant committees.

New Part 4 (old Part 5) – codes of conduct etc

- 3.23 The member and officer codes of conduct which, together with associated guidance notes, comprise Part 5 of the current constitution have not been reviewed by the constitution working group, as the change of governance model does not in itself require any amendments to these sections.
- 3.24 However, council will wish to note that the standards working group (a cross-party working group of the standards committee) is currently working on an updated member code of conduct and a modern member-officer protocol. The intention at this stage is to bring these via the policy and resources committee to council for adoption in the autumn. This work may also involve a review of the standards hearing procedure rules (as referenced in paragraph 3.10 above), which would need to be a piece of work involving both the working groups.

Recommendations

- 3.25 Council is now ***recommended*** to adopt the text at Appendices I to X as Parts 1 to 3 of the updated constitution, to come into effect at annual council in May 2022.
- 3.26 Council is further ***recommended*** to give delegated authority to the monitoring officer, in consultation with the council leader, to make minor changes to the constitution aimed at rectifying typographical, formatting or paragraph numbering errors, or to resolve any residual references to the executive model.

4 Alternative Options

- 4.1 Having made the decision to move to a committee system of governance, the council needs to put in place service committees to take on the work of the current executive. However, there is a good deal of flexibility in terms of the number and remit of these committees, so there is a range of potential alternative options. Council agreed in October that the cross-party working group should be the body to develop proposals for the detailed working of the new system, and the constitutional text at Appendices I to X reflects both the group's considered preferences and the council decisions of February and March 2022.

5 Consultation Undertaken or Proposed

- 5.1 In addition to the cross-party member working group, an officer group has also been established to work on the introduction of the new system, and that group has been consulted on the content of this report. The council fulfilled its legal

obligation shortly after the October decision to move to a committee system to bring that decision to the attention of the public by means of a newspaper notice.

6 Implications

Issue	Implications
Corporate Plan	The updated constitution is an expression of the council's fourth corporate plan priority, to 'renew local democracy and make the council fit for the future'.
Financial, Resource and Property	No implications identified at this stage. In the new model, the policy and resources committee will propose an annual budget to council in the way that cabinet does now, and once adopted all service committees will spend within the confines of that budget, again as cabinet does now.
Legal, Statutory and Procurement	The council has engaged a consultant corporate governance solicitor to assist with the redrafting of the constitution, and he is confident that the text at Appendices I to X represents a modern and legally robust approach to both the form and substance of a council constitution.
Crime and Disorder	No implications identified at this stage. Crime and disorder matters fall under the remit of the community committee in the structure proposed here.
Environment and Climate/Ecological Emergency	No implications identified at this stage. Environmental, climate and ecological matters fall under the remit of the environment committee in the structure proposed here.
Health and Wellbeing	No implications identified at this stage. Health and wellbeing matters fall under the remit of the housing and health committee in the structure proposed here.
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified at this stage. Safeguarding matters fall under the remit of the housing and health committee in the structure proposed here.
Risk Management and Health and Safety	No implications identified at this stage.
Equality and Diversity	No implications identified at this stage.
Privacy and Data Protection	No implications identified at this stage.

7 Appendices

- Appendix I: Updated text of Parts 1 and 2 of the constitution (introduction and responsibility for functions)
- Appendix II: Updated text of Part 2.8 (scheme of officer delegations)
- Appendix III: Updated text of Part 3.1 (council and committee procedure rules)
- Appendix IV: Updated text of Part 3.1 Appendix 1 (petitions scheme)
- Appendix V: Updated text of Part 3.1 Appendix 2 (joint transportation board procedure rules)
- Appendix VI: Updated text of Part 3.2 (access to information procedure rules)
- Appendix VII: Updated text of Part 3.3 (budget and policy framework procedure rules)
- Appendix VIII: Updated text of Part 3.4 (officer employment procedure rules)
- Appendix IX: Updated text of Part 3.5 (financial procedure rules)
- Appendix X: Updated text of Part 3.6 (contract standing orders)

8 Background Papers

- [Council report](#) from October 2021 regarding the decision to make a formal change to the council's governance model.
- [Council report](#) from March 2022 regarding the updates to Parts 1 and 2.
- [General purposes committee report](#) from December 2020 regarding the review of the contract standing orders. These recommendations were subsequently agreed by council.
- Current [council constitution](#).