

Council	
Meeting Date	12 October 2022
Report Title	Miscellaneous constitution updates
EMT Lead	David Clifford
Head of Service	Head of Policy, Governance and Customer Services – Monitoring Officer
Lead Officer	
Classification	Open
Recommendations	<p>Council is asked to agree the following constitutional changes:</p> <ol style="list-style-type: none"> 1. Changes to the Environment committee areas of responsibility (paragraphs 3.1-3.3 of the report). 2. An update to the Audit committee areas of responsibility (paragraphs 3.4-3.6 of the report). 3. Changes to the table at section 3.6.7.4 of the contract standing orders (paragraphs 3.7-3.9 of the report). 4. An addition to the list of areas to which the contract standing orders do not apply (section 3.6.2.3 of the constitution) (paragraph 3.10 of the report). 5. Changes to the preamble to the scheme of officer delegations (sections 2.8.1.13 and 2.8.1.15 of the constitution) (paragraphs 3.11-3.14 of the report). 6. A further change to the preamble to the scheme of officer delegations (section 2.8.1.5 of the constitution) (paragraphs 3.15-3.16 of the report). 7. A new delegation to the director of resources (paragraph 3.17 of the report).

1 Purpose of Report and Executive Summary

- 1.1 This report explains the background to a number of fairly minor amendments to the constitution, and invites council to agree these.

2 Background

- 2.1 Council voted unanimously in October last year 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 constitution. The working group comprises Cllrs Baldock (chair), Bonney, Darby, Henderson, Ingleton, Simmons, Truelove and Valentine.

- 2.2 Since the adoption of the new constitution in April and its coming into effect in May, the working group has continued to meet, with a view both to monitoring the working of the new constitution in practice and recommending improvements where necessary, and to working through the 'issues log' of areas of the old constitution which the group agreed could benefit from review but which were not essential to implementing the move to the committee system.
- 2.3 It is important that the whole constitution is kept under ongoing review, both as a means of ensuring that it is as clear and unambiguous as it can be and of enabling changes suggested by members or officers aimed at improving the efficiency and effectiveness of decision-making to be considered and, where appropriate, implemented. The working group provides a helpful forum for debating such proposals, several of which were discussed at its meeting in early September. These are set out in the 'proposals' section below.

3 Proposals

Environment committee areas of responsibility

- 3.1 Section 2.3.3 of the constitution currently sets out the areas of responsibility of the Environment committee as follows:
- Refuse collection and recycling;
 - Street cleansing;
 - Climate and ecological emergency;
 - Environmental response, including fly-tipping, contaminated land, animal welfare, pollution control, littering and illegal encampments;
 - Environmental health, including management of public health and safety risks;
 - Air quality;
 - Green spaces, open spaces and grounds maintenance;
 - Flooding, sea defences and coastal protection;
 - Active travel; and
 - Public conveniences.
- 3.2 The chair of the Environment committee has highlighted that some of these bullet points include matters which span the responsibilities of multiple heads of service, and has requested that these are consolidated into the following list, which covers exactly the same matters but grouped into a more logical order:
- Refuse collection and recycling;
 - Street cleansing;
 - Climate and ecological emergency;
 - Air quality;

- Active travel;
- Environmental response, including fly-tipping, animal welfare, littering and illegal encampments;
- Environmental health, including management of public health and safety risks, contaminated land, and pollution control;
- Green spaces, open spaces and grounds maintenance;
- Flooding, sea defences and coastal protection; and
- Public conveniences.

3.3 Council is now **recommended** to agree this change.

Audit committee areas of responsibility

3.4 Section 2.4.1.3 (ii) of the constitution currently states that the Audit committee should “consider reports dealing with the management and performance of Internal Audit Services, including consideration and endorsement of the 3 year Strategic Internal Audit Plan”.

3.5 The interim head of Mid-Kent audit has advised that audit planning is no longer by means of three-year strategic plans, and has requested that this wording be amended to the more generic “...including consideration and endorsement of internal audit plans”.

3.6 Council is now **recommended** to agree this change.

Contract standing orders

3.7 The table at section 3.6.7.4 of the constitution sets out the financial thresholds and procurement procedures. A number of rows in this table covering smaller amounts of spend for which committee approval is not required state that decisions should be ‘in agreement with’ or ‘agreed by’ the relevant committee chair.

3.8 In the absence of individual member decision-making in the committee system, the formula used elsewhere is for decisions to be ‘in consultation with’ the committee chair. This does clarify that any formal decision is by the officer, and is arguably a less ambiguous formulation than using the word ‘agreed’.

3.9 Council is now **recommended** to agree that wording based on ‘agreed’ or ‘agreement’ should be changed to ‘in consultation with’ in all four of the relevant rows in this table.

3.10 A further change which has been requested by the commissioning manager is to add a point to section 3.6.2.3, which sets out areas to which the contract standing orders do not apply. This would be added as rule 3.6.2.3.8, covering ‘Agency staff where the current contract or framework agreements are not suitable due to the

specialist nature of roles and/or higher pricing'. Council is **recommended** to agree this change.

Scheme of officer delegations

- 3.11 The preamble to the scheme of officer delegations currently includes the following text:

2.8.1.13 The delegated powers held by an officer may be exercised by the line manager of that officer, and any Director or Head of Service may authorise other responsible officers (who have the relevant skills and knowledge) to act on their behalf, provided that there is a written record of such authorisation. A central record will be kept.

2.8.1.14 Where the Council, a Committee or Sub-Committee has delegated a function to an officer, the person or body making the delegation may at any time resume responsibility for the function either in respect of a particular matter or generally, and so may exercise the function despite the delegation.

2.8.1.15 In determining the suitability of an officer to be given this authority, regard must be had to the nature of the authority being given, the seniority of the post, the experience of the relevant officer and all other relevant circumstances so as to ensure that the authority and the relevant officer are appropriately matched. This authorisation must:

- *Be in writing, dated and signed by the officer giving the authority;*
 - *Specifically identify the post and person authorised to carry out the functions;*
 - *Specifically identify the functions to which the authorisation relates (attach an extract from the scheme as the numbering may change over time); and*
 - *Identify any conditions (if any) to which the authorisation is subject.*
- 3.12 It is strange that section 2.8.1.14 appears where it does, in between two paragraphs which appear to say similar things in different words. It may be that one of these two paragraphs was adopted at some point in the past as a replacement for the other, but that the other was not deleted.
- 3.13 The council does maintain a system for keeping records of what are now known as 'onward delegations' from officers who have a direct delegation down to more junior officers. Section 2.8.1.13 probably covers this point in sufficient detail, but there are potentially some safeguards in 2.8.1.15 which it would be sensible to retain.
- 3.14 With this in mind, council is **recommended** to agree that section 2.8.1.15 is deleted and section 2.8.1.13 amended to read as follows:

2.8.1.13 The delegated powers held by an officer may be exercised by the line manager of that officer. Any officer with a delegation in this scheme of delegations may authorise other responsible officers who have the relevant skills

and knowledge to act on their behalf. A written record of such onward delegations will be kept, identifying the post to whom the delegation is given, the precise delegation(s) involved, and any conditions to which the onward delegation is subject.

- 3.15 Section 2.8.1.5 of the preamble to the scheme of officer delegation currently reads as follows:

Any post referred to below shall be deemed to include any successor post or a post which includes within the job description elements relevant to any particular delegation, which were also present in the earlier post and shall include anyone acting up or seconded.

- 3.16 Simply for the avoidance of doubt, and based on a similar provision in the Maidstone constitution, Mid-Kent legal officers have suggested that this should be expanded slightly to read "...in the earlier post and shall include anyone acting up, seconded, or employed on an interim basis". Council is now **recommended** to agree this change.
- 3.17 Finally, in the interests of efficient and effective decision-making, the director of resources has requested a new delegation as delegation 2.8.7.26, "To determine the most appropriate source of funding for the capital programme each year in order to minimise borrowing costs". Council is now **recommended** to agree this change.

4 Alternative Options Considered and Rejected

- 4.1 The recommendations in this report are aimed primarily at 'tidying up' the constitution rather than making radical changes. Nonetheless, some of the proposals would have a substantive impact. The view of officers, the constitution working group and the Policy and Resources committee is that these impacts will be positive in terms of the efficiency and effectiveness of council decision-making, but council could legitimately decline to agree any or all of them.

5 Consultation Undertaken or Proposed

- 5.1 A draft version of this report was discussed in detail by the constitution working group at its meeting in early September, and the proposals in this final version reflect the outcome of those discussions. The report was agreed by Policy and Resources committee in late September.

6 Implications

Issue	Implications
Corporate Plan	Ensuring that the constitution is as clearly written and logically structured as possible, and that its provisions enable efficient and effective decision-making, is essential to the council achieving all of its strategic corporate objectives. The recommendations in this

	report particularly support the fourth corporate plan priority of 'Renewing local democracy and making the council fit for the future'.
Financial, Resource and Property	Amendments to the delegations to the director of resources, aimed at improving the efficiency and effectiveness of decision-making, are proposed in the body of the report.
Legal, Statutory and Procurement	Amendments to the contract standing orders, aimed at improving the efficiency and effectiveness of decision-making, are proposed in the body of the report.
Crime and Disorder	No implications identified at this stage.
Environment and Climate/Ecological Emergency	No implications identified at this stage.
Health and Wellbeing	No implications identified at this stage.
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified at this stage.
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

7.1 There are no appendices.

8 Background Papers

8.1 There are no background papers.