

<b>DECISION-MAKER:</b>	<b>COUNCIL</b>
<b>SUBJECT:</b>	<b>ANNUAL REVIEW OF THE CONSTITUTION</b>
<b>DATE OF DECISION:</b>	<b>17<sup>TH</sup> MAY 2017</b>
<b>REPORT OF:</b>	<b>SERVICE DIRECTOR: LEGAL &amp; GOVERNANCE</b>

**CONTACT DETAILS**

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**STATEMENT OF CONFIDENTIALITY**

None.

**BRIEF SUMMARY**

This report sets out the annual review of the Constitution. This was considered and initially discussed by Governance Committee on 24<sup>th</sup> April 2017 and its comments are included at paragraph 47. The recommendations to both the Governance Committee and Council are included below.

As ever the Constitution is a document that changes regularly and therefore further revisions may be proposed prior to or at Council.

**RECOMMENDATIONS:**

	(i)	to agree the changes to the Constitution and associated arrangements as set out in this report;
	(ii)	to authorise the Service Director: Legal & Governance to finalise the arrangements as approved by Full Council and make any further consequential or minor changes arising from the decision of Council;
	(iii)	to approve the City Council's Constitution, as amended, including the Officer Scheme of Delegation, for the municipal year 2017/18

**REASONS FOR REPORT RECOMMENDATIONS**

1.	It is appropriate as a core tenet of good governance for the Council to keep its Constitution under regular review and to amend it, both to reflect experience and changing circumstances.
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**ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2.	The Council has previously resolved to review its Constitution annually. Therefore, it is appropriate that this report is considered by Members. There are a range of recommendations set out within the report, none of which are substantial changes save for the recommendations in respect of the Employment Appeals Panel. Members have a range of options about various changes not least of which is to amend or reject some or all of them.
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<b>DETAIL (Including consultation carried out)</b>	
<b><u>Contract Procedure Rules (Part 4)</u></b>	
3.	The amendments proposed to the current Contract Procedure Rules (CPRs) can be divided into three broad categories:
a.	Those arising from the introduction of the Public Contract Regulations 2015 (PCR 2015), Concession Contract Regulations 2016 and Transparency Code.
b.	Those arising from general updates to roles and delegations under the constitution.
c.	Those arising from the Council's evolving strategic and operational approach to procurement.
4.	The overarching objectives of these amendments are to:-
	<ul style="list-style-type: none"> <li>• Ensure that the Council fully complies with the legislation to mitigate the risk of legal challenge and</li> <li>• Ensure that good practices are embedded within the rules to achieve value for money and the supply of works, goods and services to effectively and efficiently contribute to the Council's objectives and priority outcomes.</li> </ul>
5.	The amendments do not include expansion of the scope of the CPRs to include details of business processes and governance arrangements which will be updated separately.
6.	Summarised below are the key changes proposed:-
<u>Amendments arising from the introduction of the Public Contract Regulations 2015 and Concession Contracts Regulations 2016 and Transparency Code</u>	
7.	Insertion of a paragraph which clarifies that concession agreements are governed by the Concession Contracts Regulations 2016 The current version of the CPRs do not make reference to concession agreements.
8.	Replacement of the UK (pounds) OJEU threshold values applicable between January 2016 and January 2018.
9.	Introduction of a reference to the "light touch regime" which applies to certain health, social and other services if the value of the contract being procured meets the OJEU threshold of £589,148. This permits certain deviations from the standard OJEU procurement procedures.
10.	Removal of the reference to paper based tender process as PCR 2015 requires that tender processes are run on a fully electronic basis from 18 October 2018. The Council has already adopted this approach.
11.	Clarification that the CPRs do not apply to internal service provision (including where the contracting authority awards a contract to an entity which it controls) or contracts which establish or implement co-operation between contracting authorities.
12.	Instruction that all tender documents must refer to (and any contract award must be made) on the basis of the "most economically advantageous tender" rather than the lowest tender.

13.	Clarification that contracts which are subject to the PCR 2015 must not be varied other than in accordance with the provisions of the PCR 2015 and that Officers must always seek advice from the Procurement Services Team before any variations or extensions to a contract are agreed with a supplier.
14.	Introduction of the revised reporting and notification requirements set out by the PCR 2015 including requirements to publish certain opportunities and award notices on Contracts Finder.
15.	Introduction of the requirement for the Council to obtain clarification or explanation from suppliers who submit tenders which appear abnormally low and the ability for the Council to reject a tender if the evidence supplied is not satisfactory to justify the low tender.
16.	Introduction of the requirement for the Procurement Services Team to manage and maintain a Contract Register containing data to assist the Council to meet its obligations in respect of the Department for Communities and Local Government Transparency Code. Currently the CPRs place an obligation on Service Leads to maintain a register of all current contracts and framework agreements where the contract value is less than £100,000.
17.	The proposed version of the CPRs do not anticipate the UK's position post leaving the EU. Whilst it is not anticipated that there will be any key changes to the UK's procurement approach in the short term, the CPRs will be revisited if and when any changes occur.
<u>Amendment arising from general update to roles and delegations under the Constitution</u>	
18.	Replacement of job titles to reflect current Council management structures and delegation of responsibilities as set out in the Officer Scheme of Delegation (i.e. a number of procurement related responsibilities of the CFO have moved to the Service Director; Digital and Business Operations).
19.	Amendment of terminology to reflect the move from Senior Manager to Service Director.
<u>Amendments arising from the Council's evolving approach to procurement</u>	
20.	Emphasis of the requirement for all public sector procurements (regardless of value) to adhere to public procurement requirements of equality of treatment, non-discrimination, transparency, mutual recognition and proportionality and that such adherence must be demonstrable if challenged. This is underpinned by the Social Value Act 2012 and the Council's Ethical Procurement Policy.
21.	Clarification that framework agreements will only be used when they demonstrate Best Value for a specific requirement.
22.	Instruction that the Procurement Services Team shall manage all procurement activity with the exception of requirement of less than £1,000 in value ("Low Value Transactions").
23.	Instruction that in respect of Low Value Transactions, officers must make the Procurement Services Team aware of their intention to procure prior to requesting the quote(s) to ensure that any existing contractual arrangements which may be appropriate and/or suppliers who have previously expressed an interest in the requirement being procured are identified and involved as appropriate.

24.	Instruction that the Procurement Services Team must be involved at the “defining the need” stage of the procurement process.
25.	Amendment of the Council’s thresholds which govern which procurement procedures must be used.
	<ul style="list-style-type: none"> <li>• £1,000 – £999,000 - The Procedure for Intermediate Value Transactions. The current CPRs classified £10,000 – £99,000 as Intermediate Value Transactions requiring at least three quotes.</li> <li>• Up to £999 - The Procedure for Low-value Transactions. The current CPRs classified all spend up to £10k as Low-value Transactions requiring at least one quote.</li> <li>• In accordance with good practice, three quotes must now be sought in respect of any procurement above £1,000 and the procedure will be managed by the Procurement Services Team. This is consistent with the current practice.</li> </ul>
26.	Confirmation that it is now possible to appoint a supplier if only one quote received. The current CPRs require the Council to seek additional quotes.
27.	Confirmation that approval of exemptions will be conditional to the relevant Service Director providing and agreeing a plan with the Service Director; Digital and Business Operations to mitigate the need for further exemptions relating to the contract.

**Employment and Appeals Panel – Amalgamation with Governance Committee, Terms of Reference and delegations (Part 3)**

28.	After consultation with the recognised trade unions the proposal is that all matters relating to hearings and determination of any employee grievance or appeal under the Council’s disciplinary, grievance, dismissal and other employee relations procedure are delegated to Directors to determine. This accords with national HR good practice and will reduce timelines.
29.	Authority to dismiss is currently set out in the Scheme of Delegation and there is no proposal to amend that. However, it is proposed that all appeals against dismissal will be heard by a member of Senior Leadership Team with appropriate advice and support from Human Resources and Legal Services. This will include appeals against the following dismissals:
	<ul style="list-style-type: none"> <li>• disciplinary</li> <li>• ill-health</li> <li>• redundancy</li> <li>• capability</li> <li>• probationary</li> <li>• SOSR</li> </ul>
30.	School Transport and associated appeals will be heard by a three-person panel, comprising senior officers, chaired by the Service Director: Children’s and Families. Grievances will be heard in accordance with the current procedure and the final step will be heard by Service Lead, Service Director or SLT member as appropriate.

31.	In addition, revisions to the EAP's terms of reference are recommended as below:	
<u>Functions under the Fireman's Pension Scheme</u>		
32.	Proposed that this is deleted – it relates to the obligation of “every county and county borough shall, subject to the provisions of this Act, be the fire authority for the area of the Council”. This has been superseded by the creation of Hampshire Fire and Rescue Authority and is therefore obsolete.	
<u>Redundancy and severance payments and early release of pension benefits,</u>		
33.	Proposed this is delegated to the Chief Strategy Officer after consultation with Service Director; HR and Organisational Development, Service Director; Finance and Commercialisation and Service Director; Legal and Governance. This will include requests from schools who will be required to submit a business case to the CSO.	
<u>Residual Appeals, etc</u>		
34.	Within the terms of reference an appeal provision will remain to cover any other residual appeals not specifically detailed in any other policies.	
35.	A committee will still be needed to review HR policy and deal with residual appeals. In light of the reduction of business that will be considered by EAP, it is considered that it should form part of Governance Committee's terms of reference. Chief Officer Employment Panel will still remain in situ with its terms of reference unchanged.	
<b><u>Financial Procedure Rules</u></b>		
36.	The Financial Procedure Rules have been reviewed in light of the changing Chief Officer structure and also with the strengthening of financial management in mind.	
37.	As a consequence there are a number of major changes that are aimed at strengthening the financial management within the authority, these are detailed below:	
38.	a.	The ability for Service Directors to balance their financial position within their overall resources has been made more explicit (Financial Management - What is a virement?)
	b.	To make clear that no one has the authority to overspend (A.17), and where this is a possible sets out the procedure that must be followed;
	c.	The schools elements have also been updated to reflect the changing funding and the new deficit policy agreed with the Schools Forum;
	d.	In the financial planning section the emphasis has been placed on the 5 year Medium Term Financial Plan and as a result we have been able to remove the budget section and amalgamate it with the financial planning section;
	e.	Where possible the HRA has been aligned within the standard Financial Procedure Rules
39.	The other changes are not significant and relate mainly to bringing these rules in line with the current management structure, ensuing clarity and realigning under the various headings.	

## **Officer Scheme of Delegation Revisions**

### **Capital Assets**

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| 40. | It is proposed to increase the limit for delegated authority in current paragraph 19.9 f. for the restructuring of ground leases involving an increase in rent where a premium is paid from £150,000 to £500,000 to make the limit consistent with the limit for delegated authority to sell land up to a value of £500,000 in current paragraph 19.2 b. and to exchange land up to a value of £500,000 in current paragraph 19.11. This will make the limits the same whether land is leased, sold or exchanged. |
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### **Strategy & Policy**

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| 41. | Delegation is sought to approve minor changes to Level 1 and Level 2 strategies and plans following consultation with the Leader and relevant Cabinet Member(s).  |
| 42. | Additionally, in relation to external financial bids to the Government, EU etc currently, after an external offer is received, officers have to report to Cabinet to formally approve receipt. This is seen as unnecessary and delegated authority is sought to approve bids for external funding following consultation with the relevant Cabinet Member as it is really a procedural matter.  |
| 43. | Authority is also sought to delegate minor amendments, ie those within policy and budget, to the Partnership Terms of Reference for Southampton Connect, the Safe City Partnership and the Employment, Skills and Learning Partnership, after consultation with the relevant Partnership Chair and lead Cabinet Member.   |
| 44. | A track-changed version of the complete Constitution proposed revisions can be found at:-<br><a href="http://www.southampton.gov.uk/modernGov/ieListDocuments.aspx?CId=514&amp;MId=3305&amp;Ver=4">http://www.southampton.gov.uk/modernGov/ieListDocuments.aspx?CId=514&amp;MId=3305&amp;Ver=4</a><br>Many delegations have been reallocated in accordance with operational requirements and numbering will be changed accordingly after the Council resolves, but the new and substantive changes are referred to above. |

### **Other minor amendments**

#### **Joint Working with CCG**

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| 45. | It is proposed to bring forward additional proposals for joint working with the CCG which will require additional changes to both the Council and CCG governance arrangements in due course. A report will be brought to Cabinet and the Council in the summer setting out any proposals and further changes to the Constitution. |
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#### **Clean Air Zone**

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| 46. | Work is progressing to determine a Clean Air Zone (CAZ) for Southampton to combat air quality issues. As the CAZ is a new type of statutory charging scheme it is necessary to reflect the adoption of such a zone in due course as a matter for the Executive to determine under the Local Choice functions of the Constitution. |
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### **Governance Committee recommendations**

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| 47. | As referred to above the Governance Committee considered the report on 24 <sup>th</sup> April 2017. The committee welcomed and endorsed the proposals but additionally requested that in light of the proposed delegations in relation to employment |
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	appeals that the Governance Committee receives an annual report on HR core data including the number of appeals, dismissals etc that would have previously had gone to EAP. The detail and scope of the report will be discussed with the committee chair. Additionally, the terms of reference for the Chief Officer Employment Panel will now remain unchanged.	
<b>RESOURCE IMPLICATIONS</b>		
<b><u>Capital/Revenue</u></b>		
48.	None.	
<b><u>Property/Other</u></b>		
49.	None.	
<b>LEGAL IMPLICATIONS</b>		
<b><u>Statutory power to undertake proposals in the report:</u></b>		
50.	The Executive Arrangements and Constitution are required under the Local Government Act 2000 (as amended) and the Localism Act 2011.	
<b><u>Other Legal Implications:</u></b>		
51.	None.	
<b>POLICY FRAMEWORK IMPLICATIONS</b>		
52.	None.	
<b>KEY DECISION?</b>	n/a	
<b>WARDS/COMMUNITIES AFFECTED:</b>	None	

**SUPPORTING DOCUMENTATION**

**Appendices**

1. Revised Constitution (with track changes) – online only

**Documents In Members' Rooms**

1. None

**Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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**Privacy Impact Assessment**

Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.	No
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**Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1. None	