

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Council	
MEETING/ DECISION DATE:	12th November 2015 (adjourned to 17th December 2015)	:
TITLE:	REQUIRED AND PROPOSED AMENDMENTS TO THE CONSTITUTION	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Summary of Reasons for Key Changes		
Appendix 2 – Summary of Changes to Procurement Regulations		
Appendix 3 – Summary of Delegations under Contract Standing Orders		
Appendix 4 – Revised Contract Standing Orders		
Appendix 5 – Revised Budget Management		
Appendix 6 – Revised Financial Regulations		
Appendix 7 – Constitution Working group proposed amendments		
Appendix 8 – Revised debating flowchart		

1 THE ISSUE

- 1.1 This report sets out several proposed amendments to the Constitution. Appendices 1 – 6 deal with updates required to Contract Standing orders; Procurement Regulations, Budget Management and Financial Regulations, following scrutiny by the Corporate Audit Committee, Appendices 7 – 8 were drawn up following discussions with the Constitution Working Group.

It recommends that Council consider and approve the proposed revisions,

2 RECOMMENDATION

- 2.1 That the amendments to the Council's Constitution as set out in Appendices 1 to 8 to the report be approved.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 There are no direct financial implications relevant to this report, however the rules and regulations under review enable the Council to adopt sound financial management arrangements and establish value for money, so have an indirect impact on all Council Services.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and any other relevant statutory acts or guidance.

5 THE REPORT

- 5.1 The Constitution is a single point of reference which contains the principal operating structures and procedures of the authority. It sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.
- 5.2 At its most recent meeting in September 2015, the Corporate Audit Committee reviewed all the proposed changes being made to full council and have made a formal recommendation that they be approved..

5.3 Why do we have Financial and Contractual Rules and Regulations?

This Council is responsible for many millions of pounds of public money and has a number of statutory responsibilities in relation to its financial affairs.

- 5.4 The Local Government Act 1972 directs that Authorities shall make arrangements for the proper administration of their financial affairs and that one of their officers be responsible for the administration of those affairs. The Divisional Director – Finance is the Council's designated Chief Finance Officer and hence the Section 151 Officer.
- 5.5 Under powers contained in the Local Government Finance Act 1982 (s23 and 35) the Secretary of State also makes regulations as to the accounts themselves and requires them to be audited. The "Accounts and Audit Regulations" 2011 require that the "Responsible Financial Officer" must determine and be responsible for the accounting systems and the form of both the accounts and all supporting records of the authority.
- 5.6 Further to maintain independence from the responsible financial officer 'a relevant body' must undertake an adequate and effective internal audit of its accounting records and of its system of internal control in accordance with the proper practices in relation to internal control.
- 5.7 The relevant body must therefore ensure (by maintaining an effective and adequate internal audit) that rules so made are observed and that all records are maintained in a satisfactory manner.

5.8 To conduct its business efficiently, a local authority needs to ensure that it has sound financial management policies in place and that they are adhered to. Part of this process is the establishment of Financial Regulations that set out the financial policies of the Authority, Budget Management Scheme that controls how the budget is managed in detail and Contract Standing Orders to set out the rules and guidance for how the Council commissions and procures goods and services.

The Principles of our Key Financial and Contractual Rules and Regulations

5.9 As the Council is responsible for the stewardship of public money it needs to make arrangements to safeguard the interests of taxpayers and other stakeholders. The following eight principles therefore set out at a high level the overriding expectations that Members and Officers must follow to give confidence to all of its stakeholders –

- a) **Openness and Transparency** - The Council expects its elected Members and officers to exercise high standards in financial and contract management and administration and aims to stimulate openness and a climate of transparency that it will support through policies and regulations.
- b) **Leadership & Management** - The importance of developing clear objectives for the organisation and subsequent prioritisation planning, monitoring and controlling of its resources to achieve its objectives is of vital importance to the Council and it will therefore make arrangements for these activities to be undertaken effectively.
- c) **Integrity** - Issues of probity will be dealt with effectively and the Council will work to meet its duty to maintain proper accounts and related records.
- d) **Value for Money** - Value for money is at the core of the Council's financial activity and the way in which it administers its financial affairs.
- e) **Compliance** - Compliance with statutory requirements, directives, accounting standards and appropriate codes of practice will be inherent in the Council's arrangements for financial and contractual matters. The assets and resources of the Council must be protected from loss, damage and theft
- f) **Accountability** - Allocation of responsibility and authority in relation to financial and contractual matters will be clearly identified.
- g) **Risk Management** - Identifying and quantifying risks to the Council is of key importance and arrangements must be made to reduce, eliminate or insure against them as appropriate.
- h) **One Council Approach** - The Council is a large organisation and is mindful of the need for consistent standards in financial and contractual administration and management across all its operations and will set in place guidance to be adhered to by all its directorates. In particular, it expects staff to consult with and use all of the expertise in financial, legal and contractual matters that it has available and act on advice from such sources.

Financial Regulations

- 5.10** Financial Regulations identify the financial responsibilities of Council Members, Corporate Audit Committee, Head of Paid Service, Monitoring Officer, Chief Finance Officer, Chief Internal Auditor, Strategic Directors, Divisional Directors and employees.
- 5.11** All elected Members and officers have a responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, properly authorised, provides value for money and achieves best value.
- 5.12** The Chief Financial Officer is responsible for maintaining a continuous review of the Financial Regulations and submitting any additions or changes necessary to the full Council for approval. He is also responsible for reporting, where appropriate, breaches of these Financial Regulations to the Council and / or to the members of the Cabinet.
- 5.13** The key reasons for changes to Financial Regulations are set out in Appendix 1 and revolve specifically around significant changes to financial management systems, structures and the overall framework of risk management.

Contract Standing Orders (CSO's)

- 5.14** CSO's provide the framework that governs the Council's commissioning and procurement of Contracts for works, services and goods / supplies. Up to date CSO's will help maintain good internal governance, stewardship and the proper spending of public monies, value for money and compliance with relevant law.
- 5.15** The last significant review of CSO's was undertaken 2006 in order to adopt the Public Contract Regulations 2006. Technical adjustments have been made subsequently to ensure that they reflected legislative changes.
- 5.16** The Public Contract Regulations 2015 implement the new EU Procurement Directives. Many of the changes are codification of public procurement case law since the implementation of the previous Directives, however there are some significant changes including the abolition of Part B services and the introduction of the "Light Touch" regime.
- 5.17** The Government has also used the opportunity to implement a number of other changes to create greater opportunities for SME's (known as the Lord Young reforms). Many of these changes have an impact on lower value procurement rules (under EU thresholds).
- 5.18** Public Contract law is a very complex area and the Council has taken external legal advice in drafting the revised CSO's in order to ensure that they are comprehensive but at the same time practical to implement and use.
- 5.19** **Appendices 2 & 3** are taken directly from the new CSO's and summarise the revised delegation arrangements as well as the revised procurement processes required at varying financial thresholds. The revised thresholds reflect the new regulations, local government transparency requirements and the Council's "Think Local" priority (the local market is given first opportunity for contracts up to £50,000).

Budget Management Scheme (BMS)

- 5.20 Budgets (spending plans) are needed so that the Council can plan, monitor and control the way resources are allocated and spent. Budgets reflect Council, Portfolio, Service and local priorities and give authority to Local Managers to incur expenditure to meet targets.
- 5.21 Budget management ensures that once the budget has been approved by the full Council, resources allocated are used for their intended purpose and are properly accounted for. Budgetary control is a continuous process, which reviews and manages spending against budget during the financial year. In addition, it provides the mechanism that calls to account managers responsible for defined elements of the budget.
- 5.22 The Budget Management Scheme is therefore the detailed rules which ensure that income and expenditure are in line with the agreed Council budgets and service plans (consistency of purpose) and there is overall financial control of the Council's income and expenditure.
- 5.23 Not having a scheme in place would put the Council at significant risk that -
- a) The Council may not be operating within the law;
 - b) Policies and objectives may not be achieved;
 - c) Resources may not be used in accordance with agreed authority;
 - d) Failure to secure value for money (efficient & effective use of resources);
 - e) Decisions made without the benefit of full or appropriate information;
 - f) Inability to take appropriate action at the right time.
- 5.24 The current Budget Management Scheme was last refreshed and approved by Council in November 2007. The reason for updating at this time is to reflect changes in officer structure, align the scheme with the current reporting framework and to reflect the current risk based approach now used in assessing adequacy of reserves. More detail on the changes is provided in Appendix 1.

Various amendments set out in Appendices 7 and 8

- 5.25 Following suggestions for amendments to various constitutional rules and a need to clarify some procedures, a Constitution Member Working Group was established to review the suggested amendments, comprising Councillors Rob Appleyard, Sally Davis, Robin Moss, Paul Myers, Dine Romero, Tim Warren and Lin Patterson.
- 5.26 The majority of the proposed amendments relate to the conduct of the Council meeting, with one relating to a revision needed to the call-in rules. Appendix 7 contains a list of the suggested amendments, with a rationale for the proposed change. Appendix 8 is an amended debating flowchart.

6 RATIONALE

- 6.1 Council is requested to agree the amendments to ensure that the Constitution is legally compliant and up to date with best practice. The amendments will also ensure transparency and openness of decision making and facilitate the efficient

administration of the Council's functions. It will provide robust arrangements to facilitate effective debate and decision making. An updated Constitution will ensure the Council is less likely to be challenged on its procedures and processes.

7 OTHER OPTIONS CONSIDERED

7.1 If the Constitution is not amended, it will not be up to date or reflect the correct legal position and therefore open to challenge.

8 CONSULTATION

8.1 Consultation has taken place in relation to the amendments to the Scheme as set out in Appendices 1 – 6 with a wide range of officer groups and also through the Audit Committee on three separate occasions. Consultation has taken place on Appendices 7 and 8 with the Member Working Group, the Group Leaders, the Monitoring Officer and the Chief Executive.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance. The risk of not having appropriate rules and regulations has been laid out in Section 4 of the report and would put the Council at serious risk of not being able to provide key services; deliver poor value for money; be subject to fines and penalties for non-compliance with statute and legal challenge. Therefore having an up-to-date, core set of financial and contractual rules and regulations and constitution mitigates these risks.

10 EQUALITIES

10.1 A proportionate equalities impact assessment has been carried out in relation to this report. There are no significant issues to report to the Committee.

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Background papers	Report to Corporate Audit Committee – Revisions to Key Financial and Corporate Governance Rules & Regulations - 28 th September 2015
Please contact the report author if you need to access this report in an alternative format	