

Report of the Monitoring Officer

Cabinet Portfolio Holder for Finance Councillor G S Moore

1. Summary

This report summarises the outcomes of the review of the Constitution and makes recommendations for revising it.

2. Recommendation

It is RECOMMENDED that

- a) the revisions to the Constitution be considered, endorsed and approved (in respect of executive matters) and that Council be requested to approve them
- b) any feedback from the two workshops and the Corporate Governance Group be considered by Cabinet.

3. Reasons for Recommendation

The Borough has a duty to keep its Constitution up to date and the proposed revisions are the outcome of the review of the Constitution undertaken by a Task and Finish Group ("the TFG ") during 2017 and early 2018.

4. Supporting Information

4.1 The Review

The TFG was established by the Corporate Governance Group to carry out a more in depth review of the Constitution than the "soft touch" review which was endorsed by the Council on 8 December 2016. The terms of reference of the TFG included the following:

- a) to review the accessibility, utility and usability of the current Constitution and improve it;
- b) to review the structure of the current Constitution to improve its content, layout and flow as a practical working document;
- c) to identify and prioritise specific areas of content and procedures for detailed review, noting that, in time, all sections will be reviewed.

The TFG has followed these terms when prompting and considering the work of officers involved in the review. The TFG established a programme of work and meetings throughout 2017 and early 2018 and approached the task sequentially through considering and discussing an issues paper on one part of the current Constitution at one meeting and, then, at the next meeting, discussing the detailed drafting generated by that initial discussion, as well as considering an issues paper on the next part. During the year, the TFG considered all parts of the current Constitution and has consistently applied terms of reference a) and b), with a view to making alterations which change the Constitution from being a large static document which is mainly used as an occasional source of reference for officers, to one which is capable of bringing relevant material to the immediate attention of Councillors, officers and members of the public when it is most relevant to them.

Workshops have been made available for all Councillors where the improved accessibility, utility and usability of key parts of the Constitution will be demonstrated. This expectation has also driven the preparation of significant textual changes which are referred to in the following paragraphs which comment on the proposed changes to each Part of the Constitution.

4.2 Summary of proposed changes

Part 1 – Introduction:

The proposed removal of the Articles from the Constitution (see commentary on Part 2 below) requires, in turn, significant changes to the Introduction and the opportunity was taken to give it a more local focus and include more succinct summaries of what the other Parts covered.

Part 2 – Political Leadership and Management Structure (formerly the Articles):

At an early stage the TFG agreed to the removal of the Articles from the Constitution. When constitutions were introduced into local government, through the Local Government Act 2000, they, generally, followed a national template prepared by central government, which included a part containing Articles which were intended to describe the overall principles of the governance model being used by any particular council (for Rushcliffe, the leader and cabinet model), with detailed operational provisions contained in the other Parts of the Constitution. A difficulty with this has been that the standard drafting did not restrict the Articles to matters of principle and it is necessary, on some issues, to draw detailed requirements out from both the Articles and the other Parts in order to establish the clear and complete position on an issue. A good example of this, for Rushcliffe, is that, in the current Constitution, the definition of a Key Decision is held within the Articles whilst the detailed procedural requirements that relate to them are located elsewhere. This adds unnecessary complication to actually using the Constitution and the proposed revisions delete the Articles and reallocate any essential elements within them to the most relevant Part of the Constitution, mainly by reallocation to Part 1 – the Introduction, Part 3 – Responsibility for Functions and Scheme of Delegation and Part 4 – Standing Orders, Rules and Financial Regulations.

Part 7 of the current Constitution describes the management structure and does not have cross-references elsewhere, so, to avoid cross-referencing problems from the deletion of the Articles, it is proposed to re-number Part 7 as Part 2.

Part 3 – Responsibility for Functions and Scheme of Delegation (formerly Responsibility for Functions):

The reallocation of material from the Articles has expanded this Part, particularly through describing and clarifying some of the key components of the executive governance arrangements of Rushcliffe – as operated by the Council, the Leader and Cabinet, Overview and Scrutiny and, also, setting out the Scheme of Delegation and the terms of reference for Committees, Groups, Panels and Boards.

Part 4 – Standing orders, Rules and Financial regulations (formerly Rules of Procedure):

Again, absorbing material from the Articles has expanded this Part. The proposed change of heading reflects the reversion to the use of the wording “Standing Orders” for the arrangements which govern the conduct of formal meetings. The national template for constitutions introduced the use of the wording “Procedure Rules” for what were formerly Standing Orders, notwithstanding the fact that one of only two actual statutory requirements for the content of Constitutions (section 37 (1) (b) of Local Government Act 2000) is to have “Standing Orders”, and other statutorily imposed and mandatory procedural requirements are also termed as “Standing Orders”. Most councillors have always used the traditional wording and it is proposed that this be reinstated in the revised constitution for formal meetings.

In the interests of clarity and ease of use, the proposed revisions include the creation of separate Standing Orders for committees, etc. Currently, some, but not all, of the Council Procedure Rules are applied to all committees, etc. The creation of a specific set for committees, etc, will dovetail with the ability to have electronic links to these on the committee agenda. Within these new Standing Orders, it is proposed to retain the numbering used for the Council Rules of Procedure.

There are changes proposed to the Standing Orders for Council to clarify the rules of debate and, also, to provide flowcharts for debate on a main motion and, also, to cover an amendment debate.

Only minor textual changes, along with the insertion of a flowchart on Capital Budgets, are proposed to the Financial Regulations as these were reviewed in 2016.

The Officer Employment Rules of Procedure are proposed to be moved into Part 4, as they are more appropriately located there.

Part 5 – Codes and Protocols:

A review of the Code of Conduct for Councillors, which may involve related material in Part 5 (e.g. Protocol for the Registration of Gifts and Hospitality, Guidance on Planning Application Procedures and Protocol on Councillor:

Officer Relations) is underway but will involve a longer timescale than the review of the Constitution, given the greater number of stakeholders, including parish and town councillors in the borough. The TFG were clear that they were not prepared to delay their report on this review through waiting for the review on the Code to be concluded. As a result there are, currently, no changes proposed to the above codes and protocols but the opportunity has been taken to propose the deletion of some other, very detailed material within this Part being the Protocol for the Councillors' Call for Action and the Officers' Code of Conduct. These will remain available through links to the current versions but are not statutorily required for inclusion in a constitution.

Part 6 – Members' Allowances Scheme (formerly Members Allowances Structure):

Other than correcting a textual error in the heading, no changes are proposed.

Part 7– Management Structure;

To become Part 2 with additional content showing political leadership.

4.3. Leader of the main opposition group

The TFG considered recognising the role of the leader of the main opposition group through specific references at appropriate parts of the revised Constitution. On the circulated draft these are identified by red type.

4.4 Public Speaking/Questions

The proposed revisions include material in Standing Orders for the Planning Committee which reflects the public speaking rights introduced in 2017 but do not include a wider scheme for public questions at Council and/or Cabinet as discussions on this with a wider group of councillors have not yet endorsed a model scheme. A suggested scheme will be presented in the workshops and feedback will be reported back to Corporate Governance Group and Cabinet as per paragraph 4.5 below and, if a scheme is then adopted by Council and/or Cabinet, it should be quite straightforward to insert the necessary drafting into the Constitution.

4.5 Corporate Governance Group and Councillor Workshops

Workshops for Councillors have been arranged for 5 and 6 February 2018, so all Councillors will have an opportunity to attend a presentation on the changes and see a short demonstration of the practical advantages they may bring to Councillors, officers and members of the public. Any feedback from those sessions will be reported to the Corporate Governance Group at its meeting on 8 February 2018 and to this meeting of Cabinet, along with the views of that Group, by way of an addendum to this report.

5. Implications

5.1 Finance

There are no direct financial implications arising from these proposals.

5.2 Legal

Under section 37 of the Local Government Act 2000 the Council has a duty to keep its constitution up to date and that section also prescribes its minimum content. The proposals in this report comply with those requirements.

6. Risks and Uncertainties

The proposals do not involve the Council in assuming any significant risk.

7. Corporate Priorities

The proposed revisions should make it easier for members of the public, councillors and officers to access, and use, materials which are essential to effective and efficient democratic decision-making.

For more information contact:	Glen O'Connell Monitoring Officer 0115 9148332 GOConnell@rushcliffe.gov.uk
Background papers Available for Inspection:	Draft Revised Constitution
List of appendices (if any):	None.