

PROPOSED AMENDMENTS TO THE CONSTITUTION

Report of the Strategic Head of Service (Legal & Democratic Governance) Monitoring Officer

1. INTRODUCTION AND PURPOSE OF REPORT

- 1.1. There were five meetings of the Constitution Working Party held in the 2021/22 Municipal Year.
- 1.2. This report is a composite report of all the recommendations made by the Constitution Working Party for amendments to the Constitution arising out of the reports that went to each of those meetings.
- 1.3. The new LGA Model Code of Conduct was discussed at two of the meetings of the Constitution Working Party during 2021/22 and at the Standards Committees held during 2021/22 and will form the basis of a separate report (but if adopted will mean an amendment to the Constitution).

2. SUMMARY OF PROPOSED AMENDMENTS

- 2.1. Officer Scheme of Delegation – amendments to reflect changes following the appointment of the new Chief Executive on 4 January 2022, general amendments to job titles/posts and inclusion of reference to the delegation regarding the Channel Panel;
- 2.2. Contract Procedure Rules – to align these with the other STaR authorities;
- 2.3. Financial Procedure Rules – consequential amendments as a result of the amendments to the Contract Procedure Rules;
- 2.4. Mayoralty – the inclusion of the requirement that any councillor can be nominated to be Mayor but must have served at least a four year term at the Council;
- 2.5. Scrutiny Procedure Rules – to include a requirement for the Cabinet to respond to the Scrutiny Review Panel reports; and
- 2.6. Council Meeting Procedure Rules – removal of the reference to Informal Council.

3. DETAIL OF PROPOSED AMENDMENTS

Officer Scheme of Delegation – Part 3 Section 8

- 3.1. It is recommended that the following amendments be made to the following definitions as many of the definitions contained in this section of the

constitution are out of date and therefore a revision is recommended of the following job titles/descriptions: -

- Corporate Director for People – remove and replace with Corporate Director People and Integration;
- Borough Treasurer – remove and replace with Section 151 Officer;
- Corporate Director for Place Management and Regeneration – remove and replace with Director of Place or Director of Development and Regeneration (as appropriate).

3.2. Following the appointment of Caroline Simpson as Chief Executive on 4 January 2022 and confirmation that her previous post of Corporate Director (Place) would not be recruited to (with the responsibilities of that post being split between the posts of Director of Place and Director of Development and Regeneration), the following amendments are proposed to Section 8 of the Constitution – Officer Scheme of delegation:-

Current Delegation	Location in constitution	Proposed future delegation
To the Deputy Chief Executive – Estates Management	1 to 15 Page 98 & 99	Director of Development and Regeneration Reference at delegation 9 and 12 to Corporate Director of Place Management and Regeneration to be amended to Deputy Chief Executive and for these to be delegated to the Director for Place Management
To the Deputy Chief Executive – Information and Communications	26 to 29 (page 99)	Remain as Deputy Chief Executive [to be renumbered also]
Miscellaneous	30 To exercise any functions or responsibilities delegated to the Corporate Director for Corporate and Support Services by a decision of the Executive [Cabinet] prior to 31 March 2016.	Remain as Deputy Chief Executive [to be renumbered also]

	31 To sign agreements with employees in connection with the termination of their employment with the Council.	Deputy Chief Executive
	32 To fulfil the Council's duties in relation to Domestic Homicide Reviews pursuant to Section 9 of the Domestic Violence, Crime and Victims Act 2004 and any functions which are ancillary to that duty.	Deputy Chief Executive
TO THE CORPORATE DIRECTOR OF PLACE MANAGEMENT & REGENERATION (Pages 103 to 112)		
Regeneration, Urban Renewal etc	1 – page 103	Director of Development and Regeneration
Development and Building Control, Highways and Sewers Traffic Management	2 to 39 (pages 103 to 107)	Delegation 2 - Deputy Chief Executive with the Chief Planning Officer where relevant Delegations 3 to 29 – to be split between Deputy Chief Executive with Chief Planning Officer where relevant (in relation to planning and wildlife etc) and to the Director of Place Management (in relation to hazardous substances, Highways and lead local flood authority etc)
Environmental Health and Safety/Licensing	40 to 57 (pages 107 to 109)	Director of Place Management
Policy Development	58 (page 109)	Deputy Chief Executive in conjunction with the Chief Planning Officer where relevant

Local Leisure and Heritage Functions	59 to 77 (page 109 to 111)	Director of Development and Regeneration save that any delegations or decisions relating to Stockport Active CIC are to go to the Deputy Chief Executive to avoid any potential conflicts of interest References to TPOs and Wildlife to be removed as already dealt with elsewhere (paragraph 74 and 75)
Housing matters	78 to 95 (page 111 to 112)	Director of Place Management
Miscellaneous	96 (page 112)	Director of Place Management and amend reference to Solutions Stockport Limited

3.3 All references to Corporate Director for Place Management and Regeneration and Corporate Director for Place, and Deputy Chief Executive (Place) be removed.

3.4 In the future that the Monitoring Officer be permitted to update the job titles, the definition of the Corporate Leadership Team and Corporate Director, within the Constitution as and when appropriate going forward to reflect changes in senior leadership, without needing to take such proposed amendments through the Council's governance process. This is to ensure efficiency in aligning the Constitution with new roles, for example, Section 8 as it currently reads, does not extend to cover the Director of Public Health, the Director of Development and Regeneration and the Director of Place Management.

3.5 That the requirement for the Constitution to include to which senior officer the delegation relating to the Channel Panel, be addressed by delegating this to the Corporate Director People and Integration.

3.5 Under the Scheme of Delegation, Officer Functions, Paragraph 44, the inclusion of a provision in relation to a delegated ability to a Senior Officer to immediately suspend hire car drivers' licences under the Road Safety Act 2006 on the ground of public safety so that they are no longer undertaken via the Urgent Action provisions in the constitution. This proposal also needs to be considered by the Licensing Committee.

Contract Procedure Rules (extract of report taken to STAR Joint Committee on 28 February 2022)

3.6 The STAR Authorities have been working on producing a new set of Contract Procedure Rules (CPRs) to be adopted by each of STAR Authority to provide for

consistency and efficiency across the STAR Authorities. The report was put to the STAR Joint Committee on 28 February 2022 and relevant extracts of it are reproduced below.

- 3.7 The CPRs are standing orders made pursuant to s135 of Local Government Act 1972. Where such standing orders are made, they shall include provision for securing and regulating competition for contracts entered into. They may also include exemptions to such provisions under certain thresholds specified within the CPRs.
- 3.8 Since the establishment of STAR Procurement, it has been considered essential that all partner authorities to have a single set of CPRs in order to harmonise procurement processes and enable the shared service vehicle to deliver an effective and consistent procurement processes.
- 3.9 The Council's current CPRs have been harmonised and adopted into the Constitution of each of the STAR Authorities ("Stockport, Trafford, Tameside and Rochdale").
- 3.10 The task of developing, agreeing and adopting a set of harmonised rules was a substantial and significant piece of work which was necessary to ensure that STAR Procurement and the STAR Authorities could work together against a set of agreed rules. The harmonisation project was completed by the CPR working group which consisted of Legal and Finance Officers from each of the STAR Authorities.
- 3.11 It is important that the STAR Authorities continue to have an agreed set of harmonised CPRs in order to support STAR Procurement as a shared service vehicle.
- 3.12 A review of the CPRs at this time is important as legislative changes following the UK's exit from the European Union. It provided a useful opportunity to pause and reflect on practices and approach to procurement to ensure that efficiencies and quality can be reflected.

Development and review of the CPRs

- 3.13 The CPRs only apply to procurement and contractual activity below the financial thresholds set out in the Public Contracts Regulations 2015 regulations (PCRs). The PCRs apply to all procurement and contractual activity which exceeds the thresholds.
- 3.14 Trafford's legal team, in conjunction with representatives from the legal teams from the other STAR Councils, and STAR Procurement, have worked together over the last 12/18 months to complete a robust and substantial review of the CPRs:
- 3.15 The proposed new CPRs have been agreed by legal teams at each of the STAR Authorities. However, the proposed CPRs remain subject to the agreement and adoption of all STAR Authorities before they can be adopted formally into Stockport's constitution. An update in relation to the partner authorities' adoption will be given to each committee as this report moves through the Stockport governance process.

3.16 The CPR amendments are summarised in the report and are:

3.16.1 condensed into a table of proposed amendments that are provided in Appendix 1; and

3.16.2 reflected in the text of the proposed new CPRs which are attached at Appendix 2.

Key Proposed CPR Amendments

3.17 The proposed CPRs include some instances of amendments and additions to the rules, in others and in order to ensure that the CPRs are “future proof” we have removed some of the operational aspects of the rules and transferred those provisions to the STAR Procurement Handbook where additional detailed guidance can be provided and updated periodically to reflect operational changes and improvements.

3.18 The overarching theme of the review has been to rationalise the CPRs and, where possible, remove those parts which relate to procedural aspects in order for these to be dealt with in the Procurement Handbook. The procurement handbook is an operational guidance document which provides in depth procedural procurement detail.

3.19 The CPRs have also been updated to take account of the changes to legislation and the UK’s exit from the EU.

Procurement Thresholds

3.20 An amendment which has been considered is to increase the threshold trigger for a one quote exercise for both Supplies, Services and Concessions and Works and Public Works Concessions from £4,999 to £9,999.

Modifications

3.21 Section 9 of the current CPRs deals with modifications and the circumstances where these are permitted:

- A modification is where the parties agree to change the terms of the original agreement, for example where additional works or services have become necessary and were not included in the original procurement;
- The CPRs set out the remits, described as grounds, within which such changes can be made.

3.22 Having assessed the procedures linked to modifications and the associated risks of an amendment thereto, the proposed CPRs include the following amendments:

- an additional ground will be added to permit the modification of a contract where there are; “any other exceptional circumstances as agreed by the SRO for Legal” (9.3.1(g)). The additional ground will offer some flexibility in

exceptional circumstances whilst requiring the approval of the SRO for Legal will allow for any risk to be minimised; and

- Rule 9.3.6 now also provides for a simplified process where the modification is in respect of an extension to the term of a contract which was provided for in the initial procurement documents and the contract. In these circumstances, the SRO for the relevant service and the Director of Procurement (STAR) will be authorised to approve the modification. This will ensure that contracts with inbuilt extension periods can be extended without undue delay or burdensome bureaucracy. This change does not represent any risk to the Council.

Financial Procedure Rules

- 3.23 At Appendix 3 is a tracked changed version of the Financial Procedure Rules which are the proposed changes recommended by the council's Section 151 Officer and the Deputy Section 151 Officer.

Mayoralty

- 3.24 The only proposed amendment to the Constitution at this stage is that the proposed Mayor should have served at least one term at the Council.

Scrutiny Review Panel Reports

- 3.25 The Scrutiny Co-ordination Committee requested an amendment be made to the Constitution to confirm that Cabinet are to respond to Scrutiny Review Panel reports.
- 3.26 It is recommended that this amendment is included in the Scrutiny Procedure Rules; paragraph 10.3.
- 3.27 The agenda and minutes of Scrutiny Co-ordination Committee on 13 December 2021 state:-

“This item has been placed on the agenda at the request of the Chair.

The Scrutiny Committee will be asked to discuss the response of the Cabinet to scrutiny reviews previously undertaken by scrutiny committees during the 2020/21 municipal year and whether this complied with Rule 10.3(b) of the Scrutiny Procedure Rules (Consideration of Scrutiny Committee reports by the Cabinet) in the constitution, specifically that:-

“a formal response given within 8 weeks of that consideration and reported to the Scrutiny Committee.”

RESOLVED – (1) That the Strategic Head of Service & Monitoring Officer (Legal and Democratic Governance) be requested to include an item on the agenda of the Constitution Working Party asking that consideration be given to instituting a mechanism for dealing with failures by the Cabinet to comply with the provisions of Scrutiny Procedure Rule 10.3(b).

- 3.28 Accordingly, it is recommended that the proposed additional wording to be inserted at the end of paragraph 10.3(b) (in bold):

*“10.3 (b) Where a Scrutiny Committee has made a recommendation to the Cabinet in accordance with 10.1(b) above on a matter not forming part of the policy framework and budget, the recommendation will be considered by the Cabinet or the appropriate Cabinet Member at the first available meeting or opportunity and a formal response given within 8 weeks of that consideration and reported to the Scrutiny Committee. **If, for any reason, the Cabinet does not provide a response within 8 weeks, and the Chair of the relevant scrutiny committee is not satisfied with the reason that the response has not been provided within this timeframe, the Chair may refer the matter to the next Council Meeting**”.*

Informal Council

- 3.29 That an amendment be made to the Council Meeting Procedure Rules (PR1 – para 1.2) to remove the reference to the holding of an Informal Council Meeting and to replace this with confirmation that the Annual Council Meeting will be split into two parts; namely with the ceremonial Mayor Making on the afternoon of the Tuesday of the relevant week with the meeting to then be adjourned and reconvened on either the Wednesday or Thursday evening of that same week in order to discuss the business items on the agenda. As this is a proposed amendment to the Council Meeting Procedure Rules, the proposed amendment will stand adjourned without discussion to the next ordinary Council Meeting (PR1 – para 24.2).

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1. The amendments to the Financial Procedure Rules and the amendments to the CPRs have been proposed in consultation with the Section 151 officer and his team and it is not considered that those proposed amendments nor any of the other proposed amendments in this report cause any financial risk considerations.

5. LEGAL CONSIDERATIONS

- 5.1. The Constitution sets out its only governance as to how amendments to the Constitution can be made as this is by agreement by the Council Meeting unless otherwise stated.

6. HUMAN RESOURCES IMPACT

- 6.1. There are none.

7. EQUALITIES IMPACT

- 7.1. There is no impact.

8. ENVIRONMENTAL IMPACT

8.1. There is no environmental impact of this report that require a risk assessment.

9. CONCLUSIONS AND RECOMMENDATIONS

9.1. The committee is asked to recommend the proposed amendments to the Constitution as set out at paragraph 3 above to the Council Meeting for approval and implementation by the Monitoring Officer.

BACKGROUND PAPERS

There are none

Anyone wishing to inspect the above background papers or requiring further information should contact Vicki Bates

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