

REPORT TO: FULL COUNCIL

DATE: 3 FEBRUARY 2022

TITLE: AMENDMENTS TO THE CONSTITUTION

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RECOMMENDED that:

A The revised Constitution (attached as Appendix A to the report) is adopted.

BACKGROUND

1. The Council has a constitution which sets out how the Council operates. This includes its democratic structure, how meetings will be conducted and how decisions will be made.
2. The Council adopted a new constitution when it moved from the Committee system to the Cabinet system in 2012. Since then the Constitution has been periodically updated, but there hasn't been an in-depth review.
3. This has provided an opportunity to review the effectiveness of the Constitution and the Constitution Panel has reviewed the Constitution in the latter months of 2021.
4. One of the Council's aims is to communicate as clearly as possible. However, parts of the Constitution do not meet this aim. Some sentences are too long, whilst others are poorly phrased. This means that it can occasionally be difficult to understand what the Constitution is attempting to state. Some sentences can be subject to misinterpretation, and can be duplicated.
5. Therefore the revised Constitution, attached as Appendix A to the report, has been reworded to make it easier to read. The majority of the changes come under the following categories:
 - a) Rephrasing sentences
 - b) Replacing words or phrases with synonyms;
 - c) Removing unnecessary words or sentences; and

- d) Removing paragraphs or sections where they duplicate other sections.

ISSUES/PROPOSALS

6. Whilst the majority of the changes made have no material impact, there are a few material changes and these are detailed below.

Part 2, Article 11 - Officers

7. Paragraph 11.6h has been added to accurately reflect the functions of the Monitoring Officer.

Part 2, Article 12 – Decision Making

8. Paragraph 12.6a has been added to clarify the process surrounding the delegation of responsibilities and decision making powers of members of the Cabinet.

Part 3 – Joint Arrangements

9. This part has been deleted as the Joint Partnership Committee with Uttlesford District Council no longer meets.

Part 4 – Questions on Notice

10. Members of the public and Councillors are entitled to ask up to two submitted questions on notice at each committee, Cabinet, and Full Council meeting. In order to increase the amount of interaction between Councillors and Harlow Youth Council, a standing item has been added called 'Questions from Youth Councillors'. This change has been reflected in paragraphs 2.2a.ix and 10 of the revised Council Procedure Rules.
11. Paragraph 10 of the Council Procedure Rules now includes members of the public, Youth Council and Councillors. The paragraph titled 'Questions from Councillors' has been deleted to avoid duplication. Councillors retain the right to ask up to two questions without notice. This is reflected in the revised version's paragraph 10.17.

Part 4 – Contract Standing Orders

12. Use of Performance Bonds
 - a) CSO 22 requires officers to obtain a Performance Bond for any contracts with a value of £100,000 or greater.
 - b) In the current climate, some suppliers are finding it more commercially difficult to procure Performance Bonds. Bonds are a financial liability for suppliers and can place an onerous burden on SMEs. They increase

contract costs and there is no guarantee that the Council would receive the total Bond value should the supplier be in default.

- c) It is proposed that the decision to require a Performance Bond should be proportionate to the nature and value of the contract, and measured as part of overall risk management of any proposed contract. Risk may be managed by holding a Bond Deposit or increasing retention sums held.
- d) Risk to the Council of default can be mitigated by prudent pre contract contractor due diligence and selection, and whilst in contract applying clear and robust performance monitoring. Standard contract terms allow for payment following certification of completed works.

13. Selection Suppliers

- a) CSO 10 gives the framework for supplier selection. Officers wish to widen the selection scope with a view to promoting opportunity to local suppliers and SMEs. The associated risk will be mitigated by introducing a robust approach to the pre-tender selection. Professional contract management and payment only on satisfactory completion of stages of the project stages will all assist with service delivery on time and within budget.
- b) Where possible, a minimum of two local suppliers should be given the opportunity to bid for work; provided that this does not distort competition or undermine the Council's objectives of achieving good quality and value for money.

14. Procurement Thresholds

- a) CSO 9 provides thresholds that apply when inviting tenders and quotations. The proposed changes reflect both inflation and benchmarking data, and seek to assist business and market access.

Current Thresholds	Number of Suppliers	Proposed Thresholds	Number of Suppliers
Below £5,000	Minimum of 1	Below £10,000	Minimum of 1
£5,000 < £20,000	Minimum of 3	£10,000 < £75,000	Minimum of 3
£20,000 < £50,000	Minimum of 4	£75,000 < £350,000	Minimum of 4
£50,000 < £250,000	Minimum of 5	£350,000 or greater	Minimum of 5
£250,000 or greater	Minimum of 5		
Consultation with Portfolio Holder		Cabinet Approval	
Currently £50,000 but less than £250,000 and £25,000 but less than £50,000 for consultancy services		Currently £250,000 or greater and £50,000 or greater for consultancy services	
Proposed change to £75,000 but less than £350,000 and £50,000 but less		Proposed change to £350,000 or greater and £100,000 or greater for	

than £100,000 for consultancy services	consultancy services
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15. Electronic Tendering

- a) CSO 12 provides an end to end solution for advertising and inviting tenders. It is proposed that all procurements with a value of £10,000 or above should be conducted using the Council's electronic tendering system (the MyTenders portal). MyTenders provides a complete audit trail of all procurement activity whilst giving confidence to suppliers that the complete process is open, fair and transparent from start to finish.
- b) Officers will be required to attend training to support electronic tendering.

16. Opening Tenders

- a) CSO 14 requires that the appropriate Portfolio Holder (or in their absence another Councillor) and a member of Corporate Procurement shall open tenders with an estimated value of £50,000 or greater. However, best procurement practice encourages the use of electronic processes as adopted by the Council, and the tender portal is fully GDPR compliant. The date and time of all tenders received is automatically recorded on the portal and tenders are held in a secure post box until the closing date has elapsed. This automated process negates the need for witnessing, and therefore Portfolio Holders will no longer be troubled with opening Tenders. In the few circumstances where hard copies are required and returned, the Portfolio Holder or another Councillor will continue to be invited to open tenders.

17. Waivers

- a) It is proposed that CSO 3.1 is amended to read "No exceptions shall be made from these CSOs otherwise than by a joint written decision of the appropriate Director and/or the Section 151 Officer *[in agreement with the Legal Services Manager and]* in consultation with the relevant Portfolio Holder to strengthen the governance process.

18. Social Value

- a) Social Value is mandatory for above threshold procurement (as specified in the Public Contracts Regulations 2016) as at 1 January this year, and is voluntary otherwise. Therefore, to further embed social value into the procurement process it is recommended that the Contract Management requirements prescribed in CSO 20.1 a) are amended to read "a) Performance/KPI's (*including Social Value*)". Social value already forms part of all procurement activity on a proportionate basis, regardless of the value.

- b) Training is required for Officers as social value is pervasive in nature and must form part of all above threshold bid specifications and ideally attract a quality weighting appropriate to the nature and value of the works or services sought.

Part 5 – Petitions Scheme

- 19. Paragraph 2.1 has been amended to clarify that where a petition receives fewer than 50 signatures it will be referred to the relevant department.
- 20. Under the current Petitions Scheme, the Council can only accept e-petitions submitted through its website. It is proposed that the Scheme is amended to enable petitions set up on www.change.org to be submitted. In order to ensure that signatures from a petition created in www.change.org are valid, paragraph 6.6 has been added to require the petition organiser submits a list of signatories.

IMPLICATIONS

Strategic Growth and Regeneration

As set out in the report

Author: Andrew Bramidge, Director of Strategic Growth and Regeneration

Finance

As set out in the report.

Author: Simon Freeman, Deputy to the Chief Executive and Director of Finance

Housing

As set out in the report.

Author: Andrew Murray, Director of Housing

Communities and Environment

The approach to increase the use of local suppliers is consistent with the Council's emerging Climate Change Strategy. Buying more goods and services locally will reduce transportation thereby helping the Council towards its goal of achieving Net Zero carbon emissions by 2040.

Author: Jane Greer, Director of Communities and Environment

Governance

As set out in the report.

Author: Simon Hill, Director of Governance and Corporate Services

Appendices

Appendix A – Revised Constitution

Background Papers

None.

Glossary of terms/abbreviations used

CSO – Contract Standing Order

GDPR – General Data Protection Regulations