

Report to: **Council**

Date: **25 May 2023**

Title: **Council Constitution**

Portfolio Area: **Leader of the Council**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: **Immediately**

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RECOMMENDATIONS

That the Council:

- (1) notes the Constitution as set out at <https://southhams.gov.uk/our-constitution>; and**
- (2) notes the changes made by the Monitoring Officer since the adoption of the Constitution and as set out in the Record of Changes attached as Appendix A to the report.**

1. Executive summary

- 1.1 The Council operates a Council Leader and Executive model as its governance arrangements. Functions are executive functions unless regulations say otherwise. The Leader is responsible for all executive functions and decides, through the Leader's scheme of delegation, which of these functions to delegate to other Executive members, committees or officers.
- 1.2 The Council has a legal duty to publish an up-to-date Constitution reflecting its governance arrangements and which contains its standing orders, its councillor code of conduct, such information as the Secretary of State directs or that the Council considers appropriate.

- 1.3 Following a review, the Council adopted a new style constitution last year. The Monitoring Officer has kept the Constitution under review and made changes under delegated powers. Those changes are recorded in the Record of Changes set out in Appendix A. Council is asked to note these. For clarity, any changes to the Constitution that have arisen through the appointment processes earlier at this Annual Council meeting will also be made under delegated powers by the Monitoring Officer.

2. Background

- 2.1 Under Section 9B of the Local Government Act 2000 there are two permitted forms of governance arrangements for local authorities in England; executive arrangements or a committee system. The legislation does not permit a mix and match approach. Executive arrangements may in turn consist of either a mayor and cabinet executive; or a leader and cabinet executive.
- 2.2 Under the leader and cabinet executive model, which is the form of the arrangements adopted by the Council, the Leader appoints two or more (up to a maximum of ten) councillors to the Executive. The Leader must appoint a Deputy Leader to act in the Leader's absence. Neither the Executive nor any Executive committees need be politically balanced. The Leader is responsible for all executive functions and determines the scheme of delegation for those functions and the ability to sub-delegate cascades down the executive hierarchy. Executive functions may therefore only be discharged by the Leader and subject to appropriate delegations, the Executive, a member of the Executive, an Officer or by other local authorities or under joint arrangements.
- 2.3 Functions are executive functions unless regulations say otherwise. Except for a very limited number of functions, where functions are expressly reserved to the full Council or the Council can decide as a matter of local choice whether it or the Executive will be responsible for them, a function will be an executive function if the regulations say so or are silent. In practice, this means that the division of functions between the Executive and the Council is as follows:
- (a) Determination of the Council's policy framework and budget and other constitutional and quasi-legislative functions are to be the responsibility of the full council.
 - (b) The Executive is not responsible for functions that involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a person (except in cases where there is only limited discretion in the discharge of the function) together with any related enforcement actions (including prosecution); and
 - (c) All other functions are the responsibility of the executive.

- 2.4 Section 9P of the Local Government Act 2000 requires the Council to prepare and keep up to date a document, to be known as the Constitution, which contains:
- (a) a copy of the authority's standing orders for the time being;
 - (b) a copy of the authority's code of conduct;
 - (c) such information as the Secretary of State may direct; and
 - (d) such other information (if any) as the authority considers appropriate
- 2.5 The Council's constitution is published on the Council's website at <https://southhams.gov.uk/our-constitution>. The Council completed a review of the Constitution and adopted the current Constitution in September 2022 (Min CM.25/22 refers). The decision to adopt the Constitution was the culmination of several decisions by the full Council by which it agreed changes to its decision-making framework to secure greater transparency, accountability, clarity of roles, and efficiency of the democratic process (Min. CM.50/20 refers) and agreed a new format for the Constitution as well as the various elements of the Constitution (Mins CM.36/21 and CM.8/22 refer).
- 2.6 The Monitoring Officer is responsible for keeping the Constitution under review and has delegated powers to "make changes to the Constitution to give effect to decisions of the Council, to secure compliance with the law and to correct or improve layout, spelling or grammar including, but not exclusively changes to ensure individual names, positions and job titles are updated to reflect changes in the composition of the Executive, Committees, and Officers." Appendix A to this report records the changes made or to be made under those powers.
- 2.7 No changes of substance going beyond the Monitoring Officer's delegated powers are proposed currently. However, if members consider that the Constitution should be reviewed and more substantive changes made, then it is suggested that a further report is prepared for the Audit and Governance Committee, which historically has been responsible for maintaining an overview of the Constitution and for making any necessary recommendations to the Council.

3. Outcomes/outputs

- 3.1 Keeping Constitution under review will ensure that the Council can meet its statutory obligations and make decisions transparently and lawfully.

4. Implications

| Implications | Relevant to proposals Y/N | Details and proposed measures to address |
|--|---------------------------|--|
| Legal/Governance | Y | These are set out in the report at paragraphs 2.1 – 2.4. |
| Financial implications to include reference to value for money | N | |
| Risk | N | |
| Supporting Corporate Strategy | Y | Having an up-to-date Constitution supports the delivery of quality services by setting out transparently how the Council operates, how decisions are made and the procedures which are followed. |
| Consultation & Engagement Strategy | N | |
| Climate Change - Carbon / Biodiversity Impact | N | |
| Comprehensive Impact Assessment Implications | | |
| Equality and Diversity | N | |
| Safeguarding | N | |
| Community Safety, Crime and Disorder | N | |
| Health, Safety and Wellbeing | N | |
| Other implications | N | |

Supporting Information

Appendices:

Appendix A – Record of Changes.

Background Papers:

There are no background papers.