

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Council      **DATE:** 23<sup>rd</sup> November 2021

**CONTACT OFFICER:** Angela Wakefield, Monitoring Officer  
**(For all Enquiries)**

**WARD(S):** All

### **PART I** **FOR DECISION**

#### **REVIEW OF THE COUNCIL'S CONSTITUTION**

##### **1. Purpose of Report**

As part of the Council's governance workstream, the Council is seeking to improve its governance processes to ensure lawful, fair and transparent decision making.

The report seeks approval for Phase 2 of the review, recommending amendments to the executive decision making procedures, as well as incidental amendments arising from the Phase 2 review.

##### **2. Recommendation(s)/Proposed Action**

Council is recommended to:

1. Consider and adopt the amendments set out in the appendices namely:
  - a. Article 7 The Executive
  - b. Part 3.3 Responsibility for Local Choice Functions
  - c. Part 3.5 Responsibility for Executive Functions
  - d. Part 4.4 Executive Procedure Rules
2. Amend the key decision threshold definition as set out below in Article 13 Decision Making
3. Delegate authority to the Monitoring Officer to make changes to the Council Procedure Rules to remove the reference to these applying to cabinet meetings.
4. Agree that the amendments to the Constitution will come into effect on the day following the Council meeting.

##### **3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

###### **3a. Slough Wellbeing Strategy Priorities**

The Constitution sets out the rules and procedures for decision making by the Council. The delivery of the wellbeing strategy priorities is dependent on the highest possible standards of openness, honesty and accountability.

###### **3b. Five Year Plan Outcomes**

The Constitution is central to ensuring accountability in the delivery of all five priority outcomes of the Five Year Plan.

- Outcome 1: Slough children will grow up to be happy, healthy and successful
- Outcome 2: Our people will be healthier and manage their own care needs
- Outcome 3: Slough will be an attractive place where people choose to live, work and stay
- Outcome 4: Our residents will live in good quality homes
- Outcome 5: Slough will attract, retain and grow businesses and investment to provide opportunities for our residents

#### 4. **Other Implications**

##### (a) Financial

There are no financial implications of the proposed action.

##### (b) Risk Management

The Council is legally obligated to keep its constitution under review and ensure that officers and members comply with it. Failure to comply with the constitution could render decisions unlawful, as well as failing to meet requirements in relation to public transparency.

The executive decision making arrangements have not been formally reviewed for some years and this has resulted in some of the functions referred to having been repealed. In addition it is important that the constitutional rules are clearly drafted and consistently interpreted. Some of the reserved functions set out in Part 3.5 and the key decision threshold were subject to differing interpretations, particular around financial values and how these are calculated. The re-drafted sections should provide this clarity.

##### (c) Legal Implications

Under Section 37 of the Local Government Act 2000, the Council is required to prepare and keep up to date a document, referred to as the Constitution, which contains as a minimum:

- (i) The Council's Standing Orders
  - (ii) The Council's Code of Conduct for Members; and
  - (iii) Such other information as the Secretary of State directs – under the Local Government Act 2000 (Constitutions)(England) Direction 2000 this information includes the membership, terms of reference and functions of the Council's Committees and Sub-Committees, and any rules governing the conduct and proceedings of those Committees and Sub-Committees.
- 7.2.

Subject to those provisions, it is for the Council to decide what information its Constitution should contain.

SBC's constitution contains a large number of rules and procedures and is broadly split up in the following way:

1. The Articles
2. Responsibility for functions
3. Procedure rules
4. Ethical framework

## 5. Members' allowances

This phase of the review focuses on the Executive decision making powers, which includes Articles relating to the composition of the Executive and decision making, reserved matters set out in the responsibility for functions and procedure rules set out in Part 4.

The Council operates an executive model of governance and therefore has to comply with the requirements set out in the Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The 2012 regulations set out requirements in relation to executive decisions, including the following:

1. Meetings of the Executive (Cabinet) or its sub-committees must be held in public unless the item of business permits the exclusion of the public. The main rights to exclude the public include for a reason set out under Schedule 12A of the Local Government Act 1972 (these reasons are set out in Part 4.2 - Access to Information Procedure Rules) or in exercise of a lawful power to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at the meeting.
2. If the Executive is to hold a meeting in private it must give at least 28 days notice including a statement of reasons for the meeting to be held in private.
3. For all public meetings, notice must be given in advance and the agenda must be available at least five clear days before the meeting, unless the meeting has been convened at short notice. Reports must be published in advance, unless the report is to be considered in the private part of the meeting.
4. Key decisions are subject to prescribed requirements. The definition of a key decision is an executive decision, which is likely –
  - (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or
  - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.
5. Elected members are entitled to see documents which are in the possession or control of the executive and contain material relating to any business to be dealt with at a public meeting. In addition, members of an overview and scrutiny committee are entitled to have access to documents which are in the possession or control of the executive and contain material relating to any business to be transacted at a meeting of the executive, a decision made by an individual member of the executive or a decision made by an officer in accordance with executive arrangements. Information which contains exempt or confidential information can only be requested by a member of overview and scrutiny if the information is relevant to an action or decision that the member is reviewing or scrutinising or the review is contained in a programme of work of the committee.

In relation to the election and term of office of the Leader under the Leader and cabinet model, section 91 of the 2000 Act requires that the constitution include provision with respect to the election of the Leader, including provision for an election where there is a vacancy and that it may include provision for a term of office. Such arrangements must permit the Council to remove the Leader by resolution and in such a circumstance, a new leader is to be elected at the same or a subsequent meeting.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 sets out the functions which are the responsibility of the executive. This includes “local choice” functions set out in Schedule 2. These Local Choice Functions are set out in Part 3.3.

(d) Equalities Implications

The template report for cabinet decisions contains a specific section requiring that the equality implications of the proposed decision are set out.

5. **Supporting Information**

5a **Article 7**

The changes to this article are “housekeeping” type changes to remove duplication from other parts of the constitution and to improve the drafting to reflect the fact that the Council can elect a Leader for a term of four years, but within that term the Council can pass a resolution to remove them. It also confirms that the Leader can be elected at any meeting of the Council, although this is normally undertaken at annual council following a local election.

5b **Article 13**

This Article sets out the rules relating to decision making, including setting out general principles. In relation to the Executive, it confirms that the Executive Procedure Rules in Part 4 apply, as opposed to the Council Procedure Rules. The Executive Procedure Rules are contained in Part 4.4 and have been amended as set out below to ensure there are rules for dealing with urgent business and convening special meetings.

Article 13 also sets out the definition of a key decision. This repeats the statutory definition and in compliance with guidance, confirms the agreed council financial limits above which items are deemed to be significant. Local authorities are permitted to set different thresholds for different services or types of expenditure, bearing in mind the overall budget for these services.

The Council previously determined that these limits should be:

*“any expenditure or savings of £250,000 or more shall be significant for the purposes of a key decision.”*

Officers have reviewed this threshold and recommend that the definition for a key decision should be amended to the following:

*“Key Decision is an executive decision which:*

*(a) is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates;*

*or*

*(b) is likely to be significant in terms of its effects on communities living or working in an area of two or more wards of the Borough.*

*A decision is significant for these purposes if it involves expenditure or the making of savings/receipt of income of an amount in excess of £1 million for capital expenditure or £500,000 for revenue expenditure or, where expenditure or savings are less than the amounts specified above, they constitute more than 50% of the budget attributable to the service in question. Revenue expenditure or savings should be calculated by reference to an annual figure, unless the expenditure will bind the Council for multiple years. Capital expenditure and capital receipts should be calculated based on total figures for the duration of the project or contractual term.”*

The reasons for this recommendation are:

1. The limit for capital of £250k is too low and requires relatively routine activities to be considered by cabinet, especially in relation to land transactions. The limit of £1million captures the disposal of higher value council properties, higher value contractual arrangements and higher value acquisitions of land or other assets to be authorised by cabinet.
2. The limit for revenue has been increased to £500k to avoid operational decisions within approved budgets from having to be authorised by cabinet. If a decision constitutes more than 50% of the service budget, it would still need to be authorised by cabinet, regardless of the value.
3. The definition confirms how the expenditure or savings should be calculated, particular in relation to commitments that span multiple years. This would mean that a decision to enter into a grant, contract or lease arrangement would need to be authorised by cabinet if it exceed £500k for revenue or £1million for capital over the lifetime of the arrangement. As the Council sets its budget on an annual basis, service level decisions which do not bind the Council for multiple years should be calculated by reference to the annual figure.

It is important to remember that the financial threshold is only one part of the test and that those decisions that are likely to be significant in terms of their effect on communities living or working in two or more wards are still reserved to cabinet, regardless of the financial value of the decision. The principles emphasise the importance of consultation in advance with key stakeholders. This should include consultation with ward councillors where there is a likelihood that the decision will impact significantly on a local community.

### **5c Part 3.3**

This part sets out the Local Choice Functions, which the Council has decided to mainly designate as non-executive decisions. The changes are mainly “housekeeping” amendments to remove legislation that is no longer in place. Reference has been made to the Scheme of Delegation to Officers to allow operational decisions to be made at officer level.

### **5d Part 3.5**

This part sets out the reserved matters that should be determined by the Cabinet. This part has been re-drafted to remove functions that are out of date and to separate out the functions based on whether they are policy, financial or other significant decisions. It has also removed the values for virement, referring instead to the financial procedure rules, to avoid a situation where different parts of the Constitution contradict each other.

### **5e Part 4.**

Part 4.4 has been redrafted to set out detailed procedure rules for the Executive. Article 13 makes it clear that the procedure rules for Cabinet meetings are as set out in this

rule. However, in practice the Council has been relying on the Council Procedure Rules for management of Cabinet meetings. The Leader has agreed that decisions should not be taken by a sub-committee of Cabinet or individual lead members to reflect the need for collective decision making. However, there is an urgency procedure which will allow the Leader to make a decision where there is insufficient time to convene a cabinet meeting. Such a decision must be taken in accordance with Access to Information Procedure Rules. This will allow for more transparent decision making for urgent and emergency decisions, as the current arrangements are for these to be taken by the Chief Executive. Whilst there is still a power for the Chief Executive to make urgent decisions, this is subject to consultation with the Leader and the Leader can decide at this point that it is more appropriate for him to take the decision, having received a public report. A decision taken by the Leader will be subject to call in, unless a waiver has been obtained.

The amended rules also cover the following:

1. Urgent Business
2. Calling of special meetings
3. Attendance
4. Right for elected members to ask questions – this replaces the rights under Rule 30 of the Council Procedure Rules
5. Guillotine
6. Implementation of executive decisions
7. Members' Conduct
8. Disturbance by the public
9. Right to suspend procedure rules

## **5f Consequential amendments**

The Council Procedure Rules require amendment to remove reference to specific rules applying to meetings of the Executive, as these are now covered in the re-drafted Executive Procedure Rules.

## **6 Comments of Other Committees**

The Member Working Group reviewed the proposed amendments at a meeting on 3 November 2021 and supported officers in recommending the amendments to full council.

## **7. Conclusion**

Approval of the constitution is a matter for Full Council, however the Leader, senior officers and the Member Working Group have been consulted on these changes and are supportive of them and recommend that they are adopted by Full Council.

## **8. Appendices Attached**

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|-----|---|--------------------------------------|
| '1' | - | Article 7 The Executive              |
| '2' | - | Part 3.3 – Local Choice Functions    |
| '3' | - | Part 3.5 – Executive Functions       |
| '4' | - | Part 4.4 – Executive Procedure Rules |

## **9. Background Papers**

None.