



Full Council	Tuesday, 16 April 2019	Matter for Information and Decision
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Report Title: **Approval and Adoption of Revised Council Constitution (April 2019)**

Report Author(s): **Samuel Ball (Senior Democratic Services Officer / Legal Officer)**

Purpose of Report:	To seek Council's final approval and adoption of the revised Constitution of the Borough Council of Oadby and Wigston ("the Revised Constitution") with effect from the start of the 2019/20 municipal year marked by the Annual General Meeting (AGM) on Tuesday, 14 May 2019.
Report Summary:	<p>The Constitutional Working Group (CWG) has now fulfilled its remit by updating and revising the Council's Constitution in a process spanning the previous 18-months. The CWG reported its final recommendations to the Change Management Committee ("the Committee") at its meeting on 15 January 2019 which, following consideration of those final recommendations, has culminated in a Revised Constitution which the Committee commends to Council for its final approval and adoption, subject to the inclusion and/or revision of the constitutional provisions as set out in paragraphs 3 to 5 of and appendices 2 to 8 to this report.</p> <p>Whilst the vast majority of the provisions contained within the Revised Constitution have been agreed and are not in contention, two notable provisions have attracted a divergence of opinion between Officers and Members upon which neither the CWG or, in turn, the Committee have been able to reach a formative recommendation. These provisions in contention have therefore been referred to Council for it to make the final decision on their inclusion respectively and are specially set out in paragraph 4 of and appendices 7 and 8 to this report.</p>
Recommendation(s):	<p>A. That the Revised Constitution of the Borough Council of Oadby and Wigston (as set out in Appendix 1 to and available to inspect through the means as described at paragraph 2.4 of the report) be approved and adopted by Council with effect from 14 May 2019;</p> <p>B. That Council resolves to include the constitutional provisions not in contention (as set out at paragraph 3 of and appendices 2 to 6 to the report) for respective inclusion within the Revised Constitution;</p> <p>C. That Council resolves upon its preferred version of those constitutional provisions in contention (as set out at paragraph 4 of and appendices 7 to 8 to the report) for respective inclusion within the Revised Constitution; and</p> <p>D. Delegated authority be granted to the Head of Law & Governance / Monitoring Officer to amend the Revised Constitution so to reflect the changes arising from the recently approved Corporate Plan (2019-2024) and the Council's new Management and Departmental Structure (as set out at paragraph 5 of the report).</p>

Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive / Head of Paid Service) (0116) 257 2602 anne.court1@oadby-wigston.gov.uk</p> <p>David Gill (Head of Law & Governance / Monitoring Officer) (0116) 257 2626 david.gill@oadby-wigston.gov.uk</p> <p>Steven Tucker (Democratic & Electoral Services Manager) (0116) 257 2605 steven.tucker@oadby-wigston.gov.uk</p> <p>Samuel Ball (Senior Democratic Services Officer / Legal Officer) (0116) 257 2643 samuel.ball@oadby-wigston.gov.uk</p>
Corporate Objectives:	<p>Building, Protecting and Empowering Communities (CO1) Growing the Borough Economically (CO2) Providing Excellent Services (CO3)</p>
Vision and Values:	<p>“A Strong Borough Together” (Vision) Accountability (V1) Respect (V2) Teamwork (V3) Innovation (V4) Customer Focus (V5)</p>
Report Implications:-	
Legal:	<p>An up-to-date constitution which is fit for purpose, meets contemporary needs and accords with accepted principles of good governance minimises the risk of Council-decisions being challenged and promotes the expedient and expeditious transaction of Council-business.</p>
Financial:	<p>The constitutional provisions in relation to the Financial Procedure Rules meets contemporary needs and accords with accepted principles of prudent financial regulation and promotes the expedient and expeditious transaction of the Council’s financial affairs.</p>
Corporate Risk Management:	<p>Political Dynamics (CR3) Regulatory Governance (CR6) Organisational / Transformational Change (CR8)</p>
Equalities and Equalities Assessment (EA):	<p>There are no implications arising from the report. EA not applicable.</p>
Human Rights:	<p>There are no implications arising from the report.</p>
Health and Safety:	<p>There are no implications arising from the report.</p>
Statutory Officers’ Comments:-	
Head of Paid Service:	<p>The report is satisfactory.</p>
Chief Finance Officer:	<p>The report is satisfactory.</p>

Monitoring Officer:	The report is satisfactory.
Consultees:	All Elected-Members Senior Management Team (SMT) Constitutional Working Group Change Management Committee
Background Papers:	Report entitled 'Review and Amendment of the Council's Constitution (April 2018)', to Full Council, 24 April 2018 Report entitled 'Update on the Progress of the Constitutional Work Group (July 2018) to Change Management Committee, 24 July 2018 Full Proposed Draft Constitution (Circulated in Mid-December 2018) Report entitled 'Review of the Council's Constitution Update (January 2019)' to Change Management Committee, 15 January 2019 Minutes of the Change Management Committee, 15 January 2019 (Min. Ref. 16 – 'Review of the Council's Constitution Update' etc.) Corporate Plan (2019-2024) (as approved and adopted by the Policy, Finance and Development Committee, 26 March 2019)
Appendices:	<ol style="list-style-type: none"> 1. Revised Constitution (April 2019) (see paragraph 2.4 of the report) 2. The Leader of the Council (Article 2, Para. 2.9.2) 3. Responsibility for Functions & Bodies (Part 3, Paras. 4-15 & Art. 7) 4. Council Procedure Rules, Quorum (Part 4, Rule 7.1) 5. Financial Procedure Rules (Part 4, Paras. 5.2 and 7.3) 6. Members' Substitute Scheme (Part 4, Para. 4.5) 7. Council Procedure Rules, No Speeches until Motion Seconded and Application to Committees etc. (Part 4, Rule 16.1 & 25) 8. Members' Substitute Scheme (Part 4, Para. 3)

1. Background

- 1.1 The Constitutional Working Group (CWG) in partnership with Officers has now fulfilled its remit by updating and revising the Council's Constitution in a process spanning the previous 18-months comprising of five meetings held between February 2018 and January 2019.
- 1.2 At its last meeting on 8 January 2019, the CWG was asked to consider the feedback received from all Members following the circulation of a full proposed draft Constitution ("the Draft Constitution") in mid-December 2018 and to make final recommendations in terms of updates and revisions to the Change Management Committee ("the Committee").
- 1.3 The CWG reported its final recommendations to the Change Management Committee ("the Committee") at its meeting on 15 January 2019 which, following consideration of those final recommendations, has culminated in the Revised Constitution which the Committee now commends to Council for its final approval and adoption subject to the ensuing paragraphs.

2. The Revised Constitution

- 2.1 The Revised Constitution is set out at **Appendix 1** (see paragraph 2.4 below).
- 2.2 The Revised Constitution reproduces the content of the Draft Constitution as circulated to all Members in mid-December 2018 and as was considered by the CWG and the Committee.
- 2.3 The Revised Constitution contains the following updated and revised parts:

Part No.	Title	Page No.
Part 1	Summary & Explanation	1 - 6
Part 2	Articles of the Constitution	7 - 40
Part 3	Responsibility for Functions	41 - 90
Part 4	Rules of Procedure	91 - 190
Part 5	Codes and Protocols	191 - 294
Part 6	Members' Allowances Scheme	295 - 302
Part 7	Committee Structure	303 -304
Part 8	Management & Departmental Structure	305 - 306

2.4 As the Revised Constitution is a substantially large document to reproduce, it has not been physically annexed as a hard-copy to this report. Alternatively, a copy of the Revised Constitution will be (has been) made available by Democratic Services for inspection:

- 2.4.1 at the Council Offices during ordinary business hours (9:00 am - 5:00 pm) 5-clear working days before the Full Council meeting on 16 April 2019 (by 8 April 2019);
- 2.4.2 on the [Council's website](#) and via the [modern.gov app](#) (as part of the electronic agenda reports pack) 5-clear working days before the Full Council meeting;
- 2.4.3 at the Full Council meeting itself on 16 April 2019; and
- 2.4.4 by reference to the individual copies of the Draft Constitution as circulated to all Members in mid-December 2018 and/or the copy deposited in the Members' Room (Room 104) at the Council Offices (Members only).

2.5 **Recommendation A** recommends that the Revised Constitution be approved and adopted by Council with effect from the 14 May 2019, subject to the inclusion/non-inclusion of the constitutional provisions set out in the ensuing paragraphs of this report which either:

- 2.5.1 have arisen after the circulation of the Draft Constitution at the suggestion of the Leader of the Council and/or the Senior Management Team (SMT) **-or-** have not attracted a divergence of opinion between Officers and Members and are not considered to be in contention ("the Non-Contentions Provisions"); and
- 2.5.2 have attracted a divergence of opinion between Officers and Members upon which neither the CWG or, in turn, the Committee have been able to reach a formative recommendation and therefore have been referred to Council for it to make the final decision thereon ("the Contentious Provisions").

3. The Non-Contentious Provisions

3.1 Article 2, Para. 2.9.2 – The Leader of the Council (pg. 14)

3.1.1 An additional sub-provision be included to empower the Leader of the Council to take urgent action, including the authorisation and incurrence of expenditure, in order to promote, protect or defend the reputation of the Council accordingly.

3.1.2 This additional sub-provision is set in full out at **Appendix 2**.

3.2 Part 3, Paras. 4 - 15 - Responsibility for Functions (pg. 51 - 68) & Article 7, Para. 7.1 - Bodies Directly Facilitated by the Council etc. (pg. 22)

3.2.1 The Membership numbers for (i) committees, sub-committees, panels, and working

groups appointed by the Council; and (ii) outside and partnership bodies directly facilitated by the Council be fixed as they currently subsist as of 2018/19.

3.2.2 These numbers (including quorum) are reproduced in full at **Appendix 3**.

3.3 **Part 4, Rule 7.1 – Council Procedure Rules, Quorum (pg. 97)**

3.3.1 The provision be amended to increase the quorum of meetings from one-quarter ($\frac{1}{4}$) to one-third ($\frac{1}{3}$) of the whole number of Members having the right to vote, with a three-Member baseline remaining so not to affect ad-hoc sub-committees.

3.3.2 This revised provision is set in full out at **Appendix 4**.

3.4 **Part 4 - Financial Procedure Rules, Para. 5.2 and 7.3 (pg. 130 and 134)**

3.4.1 The rules relating to 'Supplementary Estimates' (para. 5.2, pg. 130) and 'Virements Authorisation Limits' (para. 7.3, pg. 134) be revised accordingly.

3.4.2 The revised rules are set in full out at **Appendix 5**.

3.5 **Part 4 - Members' Substitute Scheme, Para. 4.5 – Attendance (pg. 188)**

3.5.1 The provision be amended requiring notice of a substitution being received by Democratic Services from no later than 5:00 pm before the last clear working day before the meeting to 12:00 pm (mid-day) on the day of the meeting, with the 'illness and other circumstances' provision at para. 4.6 remaining unchanged.

3.5.2 This revised provision is set in full out at **Appendix 6**.

3.6 **Recommendation B** recommends that Council resolves the non-contentious provisions for respective inclusion within the Revised Constitution.

4. The Contentious Provisions

4.1 **Part 4, Council Procedure Rules, Rule 16.1 – No Speeches until Motion Seconded & Rule 25 – Application to Committees and Sub-Committees (pgs. 105 and 111)**

4.1.1 A summary of the differing opinions between Officers and Members is as follows:

Officers	Members
<p>Officers recommend the retention of the provision within the existing Constitution (i.e. that no speeches should be made until a motion is on the table).</p> <p>This is recommended on the grounds that the principles of good governance, best practice, case-law, statutory guidance and the constitutions of other local authorities consistently advocate this approach as an example of good administration, thereby avoiding the risk of decisions being challenged on procedural grounds.</p>	<p>Members opine that although this provision has existed within the Council's Constitution for a number of years, it has seldom been applied in practice and, to the best of their knowledge, is not enforced at other local authorities.</p> <p>Members instead are of the view that committees should be able to hold a free debate, from which it was anticipated that a substantive motion will arise.</p> <p>Members feel that this would resolve the</p>

Officers (Cont'd)	Members (Cont'd)
<p>This approach also allows the Chair of a meeting to exercise efficient control and keep track of any amendments moved during the course of the debate.</p> <p>Officers acknowledge that there are acute difficulties involved in balancing the principles of good governance with the desire to satisfy public perception, but reiterate that good governance should always take priority over public perception.</p>	<p>issue of members of the public in attendance forming the impression that by moving a recommendation at the beginning of the debate, those Members moving and seconding the motion had already reached a pre-determined view.</p> <p>Members attach particular significance to the issue of public perception when applied to the moving and seconding of Planning Officers' recommendations at the Development Control Committee.</p>

4.1.2 Officers invite Members to review both the webcast recording of the [Planning and Development Control Committee, Leicester City Council \(30 January 2019\)](#) and the sound recordings of the [Plans Committee, Charnwood Borough Council \(7 March 2019\)](#) which illustrate the disorderly manner in which meetings can be conducted without the moving and seconding of a motion from the outset of debate.

4.1.3 Both the Officers' version at (a) and the Members' versions at (b)(i) and (b)(ii) of the relevant provisions in contention are set in full out at **Appendix 7**.

4.2 **Part 4 - Members' Substitute Scheme, Para. 3 – Nomination etc. (pg. 187)**

4.2.1 A summary of the differing opinions between Officers and Members is as follows:

Officers	Members
<p>Officers recommend that there should be a fixed, proportional number of named substitutes for each committee, who should be trained as appropriate where the requirement for training in order to sit on the committee exists.</p> <p>This is recommended on the grounds that it is consistent with the policy aims and objectives of pertaining legislation prescribing political proportionality arrangements, thereby precluding the ability of a political group to substitute their entire complement of Members.</p> <p>The naming of substitutes would also allow so-named Members to be furnished with the same information at the same point of dissemination, ensuring that all substitute Members attending meetings are in comparable well-informed position.</p>	<p>Members opine that the Scheme should have greater flexibility, with no limit on the number of Members that can be substituted and no named substitutes.</p> <p>Members feel that the pertaining legislation governing political proportionality arrangements only applies when calculating eligible Member representation and, in turn, the proportional allocation of seats on committees by political group.</p> <p>Members believe that there are political, as opposed to policy, reasons as to why a political group should be able to substitute their entire complement of Members, the main reason being that Members are subject to the political whip.</p> <p>It is accepted that substitutes should be trained were such a requirement exists.</p>

4.2.2 Both the Officers' version at (a) and the Members' version at (b) of the relevant provisions in contention are set in full out at **Appendix 8**.

4.3 **Recommendation C** recommends that Council resolves upon its preferred version of the contentious provisions for respective inclusion within the Revised Constitution.

5. The Revised Constitution and Corporate Plan (2019-2024)

5.1 At its meeting of the Policy, Finance and Development Committee on 26 March 2019, the Council approved a Corporate Plan for the period 2019 to 2024 ("the Corporate Plan") with effect from 1 April 2019 together with a new management and departmental structure.

5.2 **Recommendation D** recommends that, consistent with the powers conferred by Article 14 of the Revised Constitution, delegated authority be granted to the Head of Law & Governance / Monitoring Officer to amend the Revised Constitution to reflect the changes arising from the Corporate Plan and the Council's new Management and Departmental Structure.

5.3 Where such amendment is required to be made notably includes, but is not limited to:

5.3.1 **Article 1** – The Constitution;

5.3.2 **Article 11** – Officers;

5.3.3 **Part 3** – Responsibility for Functions;

5.3.4 **Part 4** – Rules of Procedure;

5.3.5 **Part 5** – Codes and Protocols;

5.3.6 **Part 6** - Committee Structure; and

5.3.7 **Part 8** – Management and Departmental Structure

6. Next Immediate Steps

6.1 If approved and adopted, the Revised Constitution (as amended) will take effect as the Constitution of the Borough Council of Oadby and Wigston ("the Constitution") from the start of the 2019/20 municipal year marked by the Annual General Meeting (AGM) on 14 May 2019. This effective from date represents an appropriate juncture once a new administration has been formed following the Borough Council elections on 2 May 2019.

6.2 From the 1 May 2019, a copy of the Constitution will accordingly be:

6.2.1 provided to all Members as part of their Member Induction Resource Pack;

6.2.2 made available by Democratic Services for inspection at the Council Offices during ordinary business hours (Monday - Friday, 9:00 am - 5:00 pm); and

6.2.3 made available online via the Council's website and the modern.gov app.

6.3 Additionally, the availability of the Constitution online via the Council's website and the modern.gov app will make use of enhanced but hitherto unused functionality within the Council's committee and meeting management application, to provide a more user-friendly and electronically-accessible format arrangement which will allow the extensive contents of the Constitution as a composite document to be navigated more easily and efficiently.

7. Future Review and Revision of the Constitution

7.1 The Constitution will be reviewed and revised where appropriate on an annual and ongoing basis by the Constitutional Working Group in partnership with Officers under the supervision of the Change Management Committee, subject to the provisions of Article 14 therein.

7.2 Further to paragraph 5.2 above, the Monitoring Officer is empowered in accordance with Article 14 of the Revised Constitution to amend the Constitution with immediate effect in respect of 'minor changes' (Article 14.3.2), including amendments to reflect a change in fact or law, and 'legislative changes' (Article 14.3.3) subject to certain reporting requirements.

7.3 The use of the enhanced functionality within Council's committee and meeting management application will also ensure that future reviews and revisions to the Constitution are conducted and presented in an orderly and systematic fashion with a clear audit trail.

8. Miscellaneous

8.1 All additions, revisions, deletions and versions of the constitutional provisions in the revised Constitution as set out in **appendices 2 to 8** to this report have been formatted either in ***bold/italics/underlined***, ~~struck through~~ and/or boxed for ease of reference accordingly.