

REPORT OF THE CITY SOLICITOR

**TO
FULL COUNCIL**

ON

WEDNESDAY 17 JUNE 2020

TITLE: AMENDMENTS TO THE COUNCIL'S CONSTITUTION

RECOMMENDATIONS:

The Council is recommended to:

1. Approve the following proposed interim changes to the Council's Constitution, as detailed in this report and appended to it as interim revised sections of the Constitution, to apply up to and including 6 May 2021 (unless rescinded or amended by the Council at an earlier date):
 - a) Part 4, Section A – Interim Council Procedure Rules (Standing Orders);
 - b) Part 4, Section B – Interim Access to Information Procedure Rules;
 - c) Part 4, Section D – Interim Scrutiny Procedure Rules;
 - d) Part 6, Section A – Interim Code of Conduct for Members; and
 - e) Part 6, Section B – Interim Planning Protocol for Members and Officers.
2. Agree that the versions of the above sections that were previously in force will automatically come back into effect on 7 May 2021 (unless the Council rescinds the above interim sections at an earlier date).
3. Approve the appended Remote Meetings Protocol, to apply up to and including 6 May 2021 (unless rescinded or amended by the Council at an earlier date).
4. Approve the replacement of the existing Rule 6.2 of Part 4, Section E (Officer Employment Procedure Rules) of the Constitution with a new Rule 6.2, as detailed at paragraph 3.3 of this report.
5. Approve the amendment of Part 3, Section F (Salford City Council's Scheme of Delegation of the Council's Non-executive functions to Chief Officers and list of

Salford City Council's Statutory and Proper Officers) of the Constitution, as detailed at paragraph 4.2 of this report.

EXECUTIVE SUMMARY:

The purpose of this report is to enable members to consider proposed amendments to Salford City Council's Constitution as detailed in this report. The proposed amendments include:

- Interim, time-limited, changes to certain sections of the Constitution aimed at assisting with the effective operation of remote meetings during the Coronavirus/COVID-19 pandemic; and
- Changes to the Officer Employment Procedure Rules to more clearly set out the position in respect of political assistants to political groups.
- Changes to reflect the transfer of the responsibilities of the Senior Information Risk Owner ('SIRO') from the Monitoring Officer to the Assistant Director of Strategy and Performance.

The report also presents a, time-limited, Remote Meetings Protocol to the Council for approval.

BACKGROUND DOCUMENTS:

Salford City Council Constitution – <https://www.salford.gov.uk/your-council/council-and-decision-making/council-constitution/>

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 – <https://www.legislation.gov.uk/ukxi/2020/392/contents/made>

KEY DECISION:

No – this is a non-Executive decision taken by a meeting of the Council

DETAILS:

1.0 Background

- 1.1 Section 9P of the Local Government Act 2000, requires the Council to prepare and keep up-to-date a Constitution.
- 1.2 The City Solicitor is required to monitor and review the operation of the Constitution on an on-going basis and, where necessary, bring forward recommendations for its amendment to the Council. This report details certain matters that have arisen since the Council considered the review of the Constitution set out in the City Solicitor's report to the Council meeting on 20 November 2019. Appended to this report, and summarised below, are revised versions of certain sections of the Constitution that the City Solicitor brings forward for approval. New wording appears in bold text in the appended revised sections. In addition, paragraphs 3.3 and 4.2 below detail further changes to the Constitution; as these involve minor changes to the relevant sections of the Constitution revised versions of those sections have not been appended.
- 1.3 A Remote Meetings Protocol is also presented to the Council for approval. A copy is appended to this report.

2.0 Revisions relating to remote meetings

- 2.1 The Coronavirus/COVID-19 pandemic, and the resultant restrictions and guidelines around travel and gatherings of individuals, presents a challenge to local authority decision-making of the type that would ordinarily take place within physical meetings of members. The existing legislation around local authority meetings (and meetings of local authority executives) did not provide for "virtual" or "remote" meetings.
- 2.2 Section 78 of the Coronavirus Act 2020 provided for regulations to make provision relating to—
 - (a) requirements to hold local authority meetings;
 - (b) the times at or by which, periods within which, or frequency with which, local authority meetings are to be held;
 - (c) the places at which local authority meetings are to be held;
 - (d) the manner in which persons may attend, speak at, vote in, or otherwise participate in, local authority meetings;
 - (e) public admission and access to local authority meetings; and
 - (f) the places at which, and manner in which, documents relating to local authority meetings are to be open to inspection by, or otherwise available to, members of the public.

2.3 The regulations made under section 78 of the 2020 Act that apply to England are the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020. These regulations make provision for a number of matters, including:

- (a) enabling local authorities to hold (at such hour and on such day) and alter the frequency and occurrence of meetings without requirement for further notice;
- (b) allowing for members of local authorities to attend meetings remotely, provided that the member in “remote attendance” is able:
 - (i) *to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other members in attendance,*
 - (ii) *to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting, and*
 - (iii) *to be so heard and, where practicable, be seen by any other members of the public attending the meeting;*
- (c) disapplication of provisions requiring local authorities to hold annual meetings (and providing that where an appointment would otherwise be made or required to be made at an annual meeting of a local authority, such appointment continues until the next annual meeting of the authority or until such time as that authority may determine); and
- (d) modification of legislation relating to public and press access to meetings and to information relating to decisions made by local authorities to enable such access to be available through remote means.

2.4 Pursuant to the 2020 Regulations a number of remote meetings have already been held. Although the Council has not yet had the opportunity to amend its Standing Orders and other rules pertaining to meetings so as to make specific reference to the holding of remote meetings, it has been able to rely for the time being on regulation 5(5) of the 2020 Regulations which provides that:

The provision made in this regulation [concerning remote attendance at meetings] applies notwithstanding any prohibition or other restriction contained in the standing orders or any other rules of the authority governing the meeting and any such prohibition or restriction has no effect.

2.5 Notwithstanding the above, from a good governance perspective it would be preferable for the Council to make amendments to its Standing Orders and other

relevant Rules contained in the Constitution to directly address the particular requirements of remote meetings and to adopt a Remote Meetings Protocol making more detailed provision concerning such meetings. Having clear rules and procedures for remote meetings will assist in ensuring that all necessary requirements are met, thus reducing the risk of challenge to decisions, and that remote meetings are conducted in an efficient and effective manner.

- 2.6 It is proposed that the following sections of the Constitution are for a time-limited period replaced by revised “interim” versions that contain specific provision for remote meetings and amend certain existing Rules that (were it not for regulation 5(5) of the 2020 Regulations as referred to in paragraph 2.4 above) conflict with the particular requirements applying to remote meetings:
- a) Part 4, Section A – Council Procedure Rules (Standing Orders);
 - b) Part 4, Section B – Access to Information Procedure Rules;
 - c) Part 4, Section D – Scrutiny Procedure Rules;
 - d) Part 6, Section A – Code of Conduct for Members; and
 - e) Part 5, Section B – Planning Protocol for Members and Officers.

In drafting the proposed interim revisions of the above sections of the Constitution a generic, remote meeting solution-neutral, approach has been taken, so as to better accommodate any variation in the remote meeting technology employed that may be necessary.

- 2.7 It is proposed that the revised sections of the Constitution shall only apply up to and including 6 May 2021 (unless rescinded or amended by the Council at an earlier date), reflecting the time-limited nature of the 2020 Regulations. The versions of the above sections of the Constitution that were previously in force will automatically come back into effect on 7 May 2021 (unless the Council rescinds the interim versions at an earlier date).
- 2.8 The revised sections of the Constitution also contain a small number of minor corrections/amendments that do not relate to remote meetings, for example to improve cross-referencing of provisions and to update references to external bodies that no longer exist. Given the time-limited nature of the revised sections of the Constitution, it is intended that the City Solicitor will either bring these minor changes back to the Council when the Constitution is next reviewed so that they can be re-incorporated into the sections that come back into effect on 7 May 2021 or instead, where appropriate, incorporate them through reliance on her power under Article 15.2(a) of the Constitution to make minor amendments which do not materially affect the Constitution.
- 2.9 In addition to interim revision of the sections of the Constitution referred to in paragraph 2.6 above, it is also proposed that the Council adopt the appended Remote Meetings Protocol, which contains more detailed procedures in relation to remote meetings, including remote meeting etiquette for members attending remote meetings. The proposed Remote Meetings Protocol also provides that individual meeting bodies (individual committees/panels etc.) may adopt their own supplementary remote meetings protocols.

3.0 Revision relating to assistants to political groups

- 3.1 Section 9(5) of the Local Government and Housing Act 1989 requires certain provisions to be included in the Constitution of a council relating to political assistants as follows:

The standing orders of a relevant authority, the members of which are divided into different political groups shall, for the purposes of subsection (2)(d) above —

- (a) prohibit the making of an appointment to any post allocated to a political group until the authority have allocated a post to each of the groups which qualify for one;*
- (b) prohibit the allocation of a post to a political group which does not qualify for one; and*
- (c) prohibit the allocation of more than one post to any one political group.*

- 3.2 The Council's Officer Employment Procedure Rules (Part 4, Section E of the Constitution) does not include the above required wording, providing only at the moment as follows:

6.2 Assistants to political groups

Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

- 3.3 It is therefore proposed that paragraph 6.2 of the Council's Officer Employment Procedure Rules be replaced with the following wording:

6.2 Assistants to political groups

- (a) The appointment of assistants to political groups will be made in accordance with the wishes of the relevant political groups, in accordance with the following provisions which will have effect as Standing Orders of the Council:-*
- (b) Where the Council Meeting resolves to exercise its powers under Section 9 of the Local Government and Housing Act 1989 to make appointments to posts, the duties of which are to provide assistance to members of a political group in the discharge of their functions as Councillors:-*
 - (i) No such appointment shall be made until the Council Meeting has allocated such a post to each political group which qualifies for such a post under that section;*

- (ii) *No such appointment shall be made in respect of any political group which does not qualify for such a post under that section;*
- (iii) *Not more than one such post shall be allocated to any political group;*
- (iv) *Unless the political group to which the post is allocated indicate that they are content that the terms and conditions of any such post shall be less favourable than they would otherwise be, the terms and conditions of appointment to all such posts (including the terms required to be included by sub-sections (3) and (4) of that section, and the hours to be worked and the scale of remuneration to be paid) shall be the same for all such posts;*
- (v) *Whenever any such post has been established and is vacant, the Chief Executive shall, in accordance with the wishes of the political group to which it is allocated:*
 - (a) *cause one or more advertisements giving details of the post to be placed in such newspaper or periodicals as shall be designated by that group:*

provided that not more than three such advertisements shall be placed without the consent of the Council Meeting;
 - (b) *make arrangements for meetings of such members of that group as that group may decide for the purpose of choosing a shortlist from, and interviewing, the candidates; and*
 - (c) *appoint such person as that group shall indicate on the terms and conditions approved by the Council Meeting.*

4.0 Revision relating to the transfer of SIRO responsibilities

- 4.1 To reflect the transfer of the responsibilities of the Senior Information Risk Owner ('SIRO') from the Monitoring Officer to the Assistant Director of Strategy and Performance it proposed that the changes set out in paragraph 4.2 below are made to Part 3, Section F (Salford City Council's Scheme of Delegation of the Council's Non-executive functions to Chief Officers and list of Salford City Council's Statutory and Proper Officers) of the Constitution.
- 4.2 It is proposed that the following text is deleted from the City Solicitor's entry in Part 3, Section F:

Senior Information Risk Owner (SIRO)

The Monitoring Officer is the Senior Information Risk Owner (SIRO) for Salford City Council.

It is further proposed that the following entry is added to the end of Part 3, Section F, after the existing entry relating to Director of Public Health:

Assistant Director of Strategy and Performance

The Assistant Director of Strategy and Performance is the Senior Information Risk Owner (SIRO) for Salford City Council.

5.0 Recommendations

5.1 The recommendations are set out at the beginning of this report.

KEY COUNCIL POLICIES:

Not applicable.

EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS:

A Community Impact Assessment is not necessary because no vulnerable group is considered likely to be affected by the decisions recommended in the report.

ASSESSMENT OF RISK:

Low – Amending the constitution, as recommended in the report, will reduce the risk of challenge to decisions taken at remote meetings or in relation to the appointment of assistants to political groups.

LEGAL IMPLICATIONS Supplied by:

The Shared Legal Service. The legal implications are set out in the report.

FINANCIAL IMPLICATIONS Supplied by:

Not applicable.

PROCUREMENT IMPLICATIONS Supplied by:

Not applicable.

HR IMPLICATIONS Supplied by:

Not applicable.

CLIMATE CHANGE IMPLICATIONS Supplied by:

Not applicable.

OTHER DIRECTORATES CONSULTED:

Not applicable.

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WARDS TO WHICH REPORT RELATES:

All.