

REVISIONS TO PART 5 OF THE CONSTITUTION

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| Head of Service/Contact: | Amardip Healy, Chief Legal Officer |
| Urgent Decision?(yes/no) | No |
| If yes, reason urgent decision required: | |
| Annexes/Appendices (attached): | Annex 1 - amended Part 5 of the Constitution |
| Other available papers (not attached): | “Local Government Ethical Standards. A Review by the Committee on Standards in Public Life”, dated January 2019. |

Report summary

This report presents proposed changes to Part 5 of the Council’s Constitution.

Recommendation (s)

- (1) That the Committee approves the changes to the Part 5 of the Constitution as set out at Annex 1.**

1 Implications for the Council’s Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 Good Corporate Governance underpins delivering the Council’s Key Priorities.

2 Background

- 2.1 A comprehensive review of the current Constitution is currently underway to ensure that it complies with all relevant statutory requirements, and its processes and procedures meet the needs for organisational efficiency and achieve good governance.
- 2.2 The Constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure business is conducted in an efficient, transparent, and accountable manner. Some of the content of the Constitution is required by law; the remainder is for the Council itself to determine.
- 2.3 The Monitoring Officer has a duty to keep the Constitution under review and has delegated authority to amend the Constitution where there has

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been a change in law, job title, and structure, rearrangement of job responsibilities or for general administrative convenience. All extensive changes to the Constitution, however, must be approved by Full Council.

- 2.4 Work started on Part 3 and on the Protocol for Managing Member/Officer relations (in Part 5), which Council approved at the meeting on the 17 July 2018. Changes to Part 4 were approved by Council in December 2018. As a result of changes to Part 4, an additional Protocol was added to Part 5 (the Protocol and Guidance on recording, photography & use of social media).

3 Proposals

- 3.1 Part 5 deals principally with matters relating to the ethical framework of how the Council operates. As a result of changes to Part 4, additional Protocols were added to Part 5.
- 3.2 The main changes to Part 5 consist of an update to the Code of Conduct for Members. Although work in progress, the recent report by the Committee on Standards in Public Life¹ on 'Local Government Ethical Standards' has supported the need for a more comprehensive Code of Conduct for Members.
- 3.3 The Report raised a number of issues around Member's interests, along with the complexity of local government decision making. The Report raised significant concerns around the variation in the length, quality and clarity of codes of conduct. In particular, the lack of guidance on issues around bullying, harassment and the use of social media were highlighted. As a result of the wide variety of quality of codes, a suggestion has been put forward that an updated model code should be brought back.
- 3.4 One of the recommendations from the Report is around ensure transparency of processes and decision making. For this reason a section on complaints and how they will be dealt with has been added to the Code itself.
- 3.5 Another recommendation relates to the access to more than one Independent Person. The Council was already implemented a change, by working with a number of other Surrey Councils in setting up a Panel of Independent Persons. The Council's current Independent Person has been reappointed, and we also now have access to a Panel. A report will be taken to the next Council meeting to appoint a panel of Independent Persons. Again this is yet another example of how the Council continues to promote an effective standards regime.

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- 3.6 The aim of any Code which manages conduct, is to ensure ethical practice, along with a culture which supports this. The Council does not suffer from a culture of poor ethical behaviour, however, this does not mean a more detailed Code should not be in place. Through the process of effective induction and ongoing training, against an existing backdrop of an ethical culture, the new Code will seek to continue the tradition of good leadership and behaviours by Members.
- 3.7 Other parts of Part 5 have been updated to take into account of name changes of officer posts or operating practice changes following changes to other parts of the Constitution.
- 3.8 Work on the Planning and Licensing Protocols is currently ongoing. The interrelationship between these Protocols and the work of the Standards Committee to “promote and maintain high standards of conduct by members” is key to any review of the Protocols. For this reason, the Standards Committee will invite members of both the Planning and Licencing & Planning Policy Committees when discussing changes to the relevant protocols.
- 3.9 Sections of the Part will be renumbered to adopt a numerical numbering system. By way of summary, Table 1 below sets out the proposals for review and amendments to Part 5:

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Table 1

| Section | Current Position | Proposal |
|--|--|---|
| 1. Epsom & Ewell Borough Council Member Code of Conduct | Revised Code and related processes and procedures | New Code, which includes processes and procedures in one place. |
| 2. Officer's Code of Conduct | No changes at present, pending review following changes to Council's People Framework | No Change |
| 3. Protocol for Managing Member/Officer Relations | Updated in July 2018 | No Change |
| 4. Monitoring Officer Protocol | Updated with title changes | Updating only |
| 5. Protocol on Use of Call-in Procedure | Updated with title changes | Updating only |
| 6. Code of Conduct & Practice in Licensing Procedures & Hearings | Updated following changes to Part 3 | Updating only |
| 7. Code of Conduct & Practice in Licensing Procedures & Hearing – Gambling Act 2005 | Updated following changes to Part 3 | Updating only |
| 8. Model Code of Practice in respect of Planning Matters: Probity in Planning | Currently under review. | No change but work has commenced on rewriting the Code to reflect changes to practice and provide further clarity. |
| 9. Whistleblowing Policy | Currently under review. | Will be brought back once wider governance review completed. |
| 10. Recording, Photography and Use of Social Media Protocol and Guidance | New protocol introduced in December 2018 | No change |

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4 Financial and Manpower Implications

- 4.1 There are no financial implications for the purposes of this report.
- 4.2 **Chief Finance Officer's comments:** None for the purposes of this report.

5 Legal Implications (including implications for matters relating to equality)

- 5.1 Section 37 of the Local Government Act 2000 and the guidance issued under it requires the Council to keep the Constitution up to date and regularly review it. There are no specific equality implications from the proposed amendments.
- 5.2 In relation to the Code of Conduct for Members, Section 27 of the Localism Act 2011, required each authority to adopt a code of conduct against which a councillor's conduct could be assessed. The Code was required to reflect the Seven Principles of Public Life. As a check on impartiality the new role for the Independent Person was created. The current model and processes were adopted in 2012 as required by the legislation.
- 5.3 **Monitoring Officer's comments:** It is important to note that the Local Government Act 2000 requires the Council to have and maintain a Constitution. The process of updating the Constitution will ensure it fulfils its stated purpose, as set out in Article 1.

6 Sustainability Policy and Community Safety Implications & Partnerships

- 6.1 There are no implications of the purposes of this report.

7 Risk Assessment, Conclusion and Recommendations

- 7.1 The Council needs a sound Constitution that is kept up-to date and fit for purpose. By adhering to the rules and guidance set out in the Constitution, Officers and Members alike protect themselves from risk of challenge.
- 7.2 The changes to the Constitution are being taken in sections and a further review of the whole document will be undertaken when all parts have been individually reviewed. Accordingly, the recommendations in the body of the report are commended to the Committee. If approved a report will be taken to the next Council meeting seeking approval and adoption of Part 5.

Ward(s) affected: (All Wards);

ⁱ <https://www.gov.uk/government/publications/local-government-ethical-standards-report>