# Democracy Committee 15 November 2017

# Amendments to the Constitution

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| **Final Decision-Maker** | Council |
| **Lead Head of Service/Lead Director** | Patricia Narebor, Head of Legal Services Partnership and Monitoring Officer |
| **Lead Officer and Report Author** | Donna Price, Interim Deputy Head of Legal Services Partnership |
| **Classification** | Public |
| **Wards affected** | All |


**Executive Summary**

The report sets out the proposed amendments to the Council Procedure Rules within the Constitution in order to facilitate the Council and its Officers to effectively carry out their duties and remove any potential ambiguity in decisions made by the Council.


**This report makes the following recommendations to this Committee:**

1. To consider and recommend to Council for approval the proposed amendment to the Council Procedure Rules to insert the 'six month rule' with regards to motions as set out in paragraph1.8 of the report and to agree the number of members required to sign the notice of motion.
2. To consider and recommend to Council for approval the proposed amendment to the Council Procedure Rules with regards to the submission of amendments to the budget decision meeting of Council as set out in paragraph 1.13 of the report.
3. To consider and agree whether or not the business conducted should be limited in any way at a budget decision meeting and to make recommendations to Council.
4. To recommend to Council that the Monitoring Officer be instructed to make the agreed changes to the Constitution.

| **Timetable** | |
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| ***Meeting*** | ***Date*** |
| Democracy Committee | 15 November 2017 |
| Council | 6 December 2017 |

# Amendments to the Constitution

## 1. INTRODUCTION AND BACKGROUND

1.1 As the Constitution is a living document it is necessary to keep it under continuous review so that amendments can be made as and when necessary to ensure the document is kept up to date.

1.2 A full review of the effectiveness of the Constitution was carried out in January/February 2016 and the recommended amendments were agreed in April 2016. Following this review the Constitution has worked well and as such it has not been necessary to carry out a full review, however, as necessary amendments have been identified they have been brought forward for adoption by Council.

1.3 In March of this year it was necessary to bring forward a report to Democracy Committee as changes were required to officer delegations and the functions and responsibilities of the Heritage, Culture and Leisure Committee. Such changes were recommended to Council and subsequently approved.

**'Six Month Rule'**

1.4 As part of the report to Democracy Committee in March it was also recommended that the Council Procedure Rules be amended to insert the six month rule with regards to motions as it was believed to have been omitted as part of the redraft of the Constitution. Whilst members were generally in support of the provision concerns were raised over the number of members required to move the motion, therefore the item was deferred so that the provision accurately reflected what was previously in the Constitution.

1.5 Following the Democracy Committee meeting it came to light that the provision had actually been omitted from previous versions of the Constitution therefore it was not the case that it was a drafting error when the new Constitution was adopted in 2016.

1.6 The 'six month rule' provision prevents a motion or amendment to rescind a decision made at a meeting of Council, or to bring forward a motion of amendment in similar terms to one that has been rejected a meeting of the Council, within a period of six months unless the notice of motion is signed by a minimum number of members. The purpose of the provision is to ensure stability in decision making for a set period and avoid any unnecessary duplication or ambiguity.

1.7 Having reviewed the Constitution of other local authorities in Kent, including our partner authorities, they have all adopted the provision.

1.8 It is therefore recommended that the Council Procedure Rules be amended to insert the following provisions taken from the DCLG Model Constitution for Local Authorities:

**"Previous Decisions and Motions**

- **Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of Motion is signed by at least *[insert number]* of the whole number of the Council.

- **Motion similar to one previously rejected**

A Motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of Motion or amendment is signed by at least *[insert number]*of the whole number of the Council Members. Once the Motion or amendment is dealt with, no one can propose a similar Motion or amendment for six months."

1.9 Should Democracy Committee be minded to recommend adoption of the provision to Council there is a decision to be made as to the number of members needed to move the notice of Motion. In order to assist members a comparison of numbers adopted by other Kent authorities is set out in the table below:

| Authority | Total number of Councillors | Number of Councillors needed to move the notice of motion |
|---|---|---|
| Ashford Borough Council | 43 | 16 |
| Canterbury City Council | 39 | 8 |
| Dartford Borough Council | 44 | Third of all members |
| Dover District Council | 45 | Third of all members |
| Gravesham Borough Council | 44 | 11 |
| Shepway District Council | 32 | 9 |
| Swale Borough Council | 47 | Third of all members |
| Tunbridge Wells Borough Council | 48 | 10 |

**Budget Decision Meeting**

1.10 The Council has a statutory duty under the Local Government and Finance Act 1992 to agree a balanced budget and in times of austerity this is becoming increasingly difficult for all local authorities.

1.11 The budget decision meeting usually takes place in March each year and at present members are able to move amendments to the budget proposals at the actual Council meeting which could result in an inability to balance the budget if the proposals are agreed or for the need to adjourn the meeting.

1.12 Any counter proposals submitted to the budget must achieve the statutory objective of a balanced budget, therefore sufficient time is needed to enable officers to consider the implications of any alternative amendment and to present sufficient detail at the Council meeting. All members will then be fully aware of the impact of such proposed amendments when making their decision at the meeting.

1.13 It is therefore recommended that the Council Procedure Rules be amended to include provision that all proposed amendments are provided in writing in advance of the meeting to give sufficient time for officers to ensure a balanced budget can be achieved if such amendments are agreed, and that no further amendment to the budget can be made at the budget decision meeting. Proposed amended wording is set out below:

> "Amendments to the budget are to be made in writing and delivered to the Proper Officer by 5pm on the Monday before the meeting. In proposing any changes to the budget any amendment must ensure that the proposal achieves a balanced budget."

1.14 Due to the importance of the budget decision meeting and to allow sufficient time for discussion to take place, members may be minded to amend the Council Procedure Rules to consider limiting what business can be undertaken at that meeting. The business of an Ordinary Meeting of Council is set out in Appendix I to this report and members of the Committee are asked to consider whether they wish to amend this for budget decision meetings.

## 2. AVAILABLE OPTIONS

2.1 The first option is to "do nothing". The Committee could decide not to accept the proposed amendments at this time. The Constitution has worked quite well since it was adopted. However the proposed amendments will facilitate the Council and its Officers to effectively carry out their duties.

2.2 The second option – which this report recommends – is to consider and accept the proposed amendments and recommend that Council adopts them.

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## 3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

3.1 It is recommended that the Committee adopts the second option in paragraph 2.2 above and accepts the recommendations and proposes the amendments to Council at its meeting on 6 December. The amendments to the Constitution can then be made by the Monitoring Officer.

3.2 The proposed amendments will facilitate the Council and its Officers to effectively carry out their duties and remove any potential ambiguity in decisions made by the Council. In addition, it is essential that the Constitution should be reviewed and amended regularly to reflect the changing demands of the Council and the public.

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## 4. RISK

4.1 The insertion of the six month rule will mitigate any risks associated with the amendment of decisions that have been or are in the process of being implemented without a reasonable period of time elapsing.

4.2 The proposed procedure for the submission of amendments to the budget will provide a further safeguard against the possible risks associated with not being able to achieve a balanced budget.

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## 5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 The Democracy Committee previously considered the implementation of the six month rule and this report addresses the concerns raised. Discussions have also taken place with the Chief Executive regarding the proposed amendments to budget decision meetings.

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## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 If approved, the amendments to the Constitution will be presented to Council on 6 December with the recommendation that it adopts the revisions to take immediate effect.

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## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue | Implications | Sign-off |
|---|---|---|
| **Impact on Corporate Priorities** | We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, a clear and effective Constitution supports all corporate priorities. Reviewing the Constitution regularly ensures that it most effectively meets the needs of the Council and the public. | Interim Deputy Head of Legal Partnership |
| **Risk Management** | The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. The changes proposed are to ensure the | Interim Deputy Head of Legal Partnership |

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| | effective running of the council, when deciding whether to approve the changes the committee will need to consider the risk of not making amendments. | |
| **Financial** | The recommendations do not have any direct financial implications, however, they assist with the Council's statutory duty under the Local Government and Finance Act 1992 to achieve a balanced budget | Interim Deputy Head of Legal Partnership |
| **Staffing** | None identified in this report. | Interim Deputy Head of Legal Partnership |
| **Legal** | The legal implications are set out in the body of the report. | Interim Deputy Head of Legal Partnership |
| **Privacy and Data Protection** | None identified in this report. | Interim Deputy Head of Legal Partnership |
| **Equalities** | None identified in this report. | Interim Deputy Head of Legal Partnership |
| **Crime and Disorder** | None identified in this report. | Interim Deputy Head of Legal Partnership |
| **Procurement** | None identified in this report. | Interim Deputy Head of Legal Partnership |

## 8. REPORT APPENDICES

Appendix I – Extract from Council Procedure Rules

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## 9. BACKGROUND PAPERS

None