

Constitutional Amendments, Appointments to Committees & Reporting

REPORT TO FULL COUNCIL



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| DATE | 22/02/2023 |
| PORTFOLIO | Leader |
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PURPOSE

1. To consider a report on:
 - waivers of call-in;
 - changes to the constitution by the Leader;
 - proposals to update the Financial Procedure Rules, Standing Orders, Procurement Strategy, Scheme of Delegation (Council functions) and Proper Officer List; and
 - the proposed nomination to Scrutiny Committee by the Burnley and Padiham Independent Party

RECOMMENDATION

2. That the call-in waivers relating to the urgent Executive Reports and Urgent Chief Executive Decision be noted.
3. That Members note the addition to the Constitution Part 3 Scheme of Delegation approved by the Leader on 17th January 2023, granting a delegation to the Chief Operating Officer to exercise delegations granted to Heads of Service in the absence of that Head of Service.
4. That Members approve the changes to Financial Procedure Rules and Standing Orders for Contracts.
5. That Members approve the Council’s updated Procurement Strategy 2023-2028.
6. That Members approve the updated Part 3 Scheme of Delegations (Council Functions) and Proper Officer list.
7. That Members approve the appointment of Cllr Mark Payne to the Scrutiny Committee.

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| REASONS FOR RECOMMENDATION |
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8. To ensure that the Financial Procedure Rules reflect and remain compliant with all relevant legislation and policy.
9. To ensure that the purchase of all goods, works and services is effective and compliant with the Public Contract Regulations 2015 and the Council's Financial Procedure Rules.
10. To ensure alignment of the Council's Procurement Strategy and actions with corporate strategic priorities, the National Procurement Strategy for Local Government, and with the Public Contract Regulations 2015 and sector best practices.
11. To update the Constitution and Proper Officer List to ensure it is up to date and allow the efficient conduct of Council business.
12. To ensure that committee seats are politically balanced as required by the Local Government and Housing Act 1989, and appointments are up to date.

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| SUMMARY OF KEY POINTS |
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13. Call-in Waiver

Part 4.5 of the constitution requires that a waiver of call-in be reported at Full Council. The Chair of Scrutiny agreed to call-in being waived regarding the following decisions: Town 2 Turf - Urgent Executive Decision taken by Executive 30th November 2022, Executive Delegations Report at 19th January Executive and Town 2 Turf Lighting Procurement – Chief Executives Urgent (Executive) Decision on 25th January 2023. (see Appendices 1 - 3).

14. Update of Part 3 Constitution Scheme of Delegation (Executive Functions)

The Leader has approved changes to the Executive functions as set out in appendix 4 and these are presented to Full Council for noting.

15. Financial Procedure Rules (FPR)

FPR Part 4.7 of the Constitution, section D3 'Contracts' has been updated to incorporate revised Competition Law requirements introduced through the Subsidy Control Act 2022 (04/01/23). The Act replaces EU State Aid Rules; however, EU rules still apply to European Regional Development and Social Fund projects.

Officers are required to consider if a contractual arrangement provides direct or indirect support to an organisation over any other that is capable of effecting competition or investment within the UK or outside territories.

Consideration must be given against a set of subsidy (financial assistance) tests and possible exemptions. Where a subsidy is determined as being present, officers must consider further steps to make a contract award lawful. The council will be obliged to publish relevant information on the UK Transparency Database where a subsidy is provided that is greater than £100,000 in value.

The updated financial procedure rules are available at appendix 5.

16. Standing Orders for Contracts (SOC)

SOC, Part 4.7 of the Constitution, set out the actions which officers must follow to comply with FPRs and The Public Contract Regulations 2015, when contracting for goods, services and works through public expenditure.

Details of proposed changes to SOC are shown in the tracked changes document attached. In summary changes have been included to reflect amendments to, and introduction of new, legislation and best practice including:-

- a) A proposed increase in the Executive tender approval and SOC exemption threshold from £100,000 to £125,000 to recognise general price increase in the marketplace and inflation.
- b) A change is also proposed in the requirement to obtain Executive approval to issue or publicise a tender above £125,000 to approval obtained from the relevant Head of Service in consultation with the Head of Finance & Property Services and the relevant Executive Portfolio Holder. Note: the requirement to obtain approval to accept a tender above £125,000 remains with the Executive. This will minimise use of urgency powers and remove potential delay in the tender process. To note: when issuing a tender, the Council reserves the right not to award a contract should that be necessary.
- c) An increase is also proposed, in line with point a above, from £100,000 to £125,000 where exemptions to SOC can be made by the Head of Finance & Property Services and the Head of Legal & Democratic Services.
- d) Actions to be taken by Officers as necessary to meet the requirements within the recent Subsidy Control Act 2022 and reporting regime have been included.
- e) Similarly, under new legislation where VAT applies to a contract, the assessment of contract value to determine whether it will exceed the relevant procurement thresholds must now include VAT.

The updated standing orders for contracts is available at appendix 6.

17. Procurement Strategy 2023 - 2028

A review has been carried out of the Council's Procurement Strategy. It has been updated to reflect recent changes in national policy, guidance, and best practices from across the public sector.

The strategy aligns procurement actions with corporate strategic priorities, the National Procurement Strategy for Local Government 2022, and with changes in the Public Contract Regulations.

The strategy sets out the council's responsibilities by continuing to mature its framework for procurement and promoting and supporting the council's strategic priorities for the borough.

The strategy applies to all council expenditure on goods, services, works and utilities. It meets the necessary National Procurement Strategy aims to show leadership in procurement, behave commercially and achieve community benefits.

Compliance with this strategy will support our duty to deliver best value, particularly where new service delivery models or efficiencies are required and improve and adapt how we procure services and goods to meet the changing needs of customers and the organisation through strong leadership in cost effective, innovative, responsible, and commercial ways.

The updated procurement strategy is available at appendix 7.

18. Updates to the Constitution and Proper Officer List

Details of proposed changes to the Council's Scheme of delegation for Council functions are shown in tracked changes along with an explanation for the proposals.

It is important to keep the proper officer list updated so that it does not become out of date. The list is self-explanatory and has been updated to reflect (inter alia) changes in legislation over time. Members will also note that the Chief Executive and Chief Operating Officer have been given delegated authority to act as the relevant Proper Officer in the absence of a Proper Officer to ensure that council business can continue in an efficient and timely manner. The said list shall also be published on the Constitution section of the Council's website for transparency.

The updated constitution and proper officer list is available at appendix 8.

19. Appointments to Committees

Burnley & Padiham Independent Party have to allocate one of their members to the scrutiny committee following the resignation of Cllr Emma Payne. Cllr Mark Payne has been nominated to fill this vacancy by the Burnley and Padiham Independent Party.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

20. None.

POLICY IMPLICATIONS

21. None.

DETAILS OF CONSULTATION

22. Member Structures Working Group.

BACKGROUND PAPERS

23. None.

FURTHER INFORMATION

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