

Report for:	<b>Shadow Executive</b>
Meeting Date:	<b>18 February 2020</b>

<b>Title of Report:</b>	<b>Constitution</b>
Shadow Portfolio Holder	Cllr Martin Tett
Responsible Officer	Sarah Ashmead, Deputy Chief Executive & Monitoring Officer
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<b>Recommendations:</b>	<ol style="list-style-type: none"> <li><b>1. That the Shadow Executive approve the Scheme of Delegation (subject to any required amendments) in relation to delegations of executive functions</b></li> <li><b>2. That the Shadow Executive recommend the draft Constitution (subject to any recommended amendments) to the Shadow Authority for adoption as the Constitution of Buckinghamshire Council</b></li> <li><b>3. That delegated authority is given to the Monitoring Officer, in consultation with the Leader, to make any minor changes, including clarifications, and necessary textual revisions to the draft Constitution to ensure that the separate sections of the Constitution are consistent, work together as a whole and reflect any changes to legislation</b></li> <li><b>4. That the Shadow Executive recommend that Shadow Authority give delegated authority to the Monitoring Officer in consultation with the Leader as per 3. above in relation to the approved Constitution up to and including 31 March 2020</b></li> <li><b>5. That the operation of the Constitution is reviewed in April 2021</b></li> </ol>
Corporate Implications:	Section 9P of the Local Government Act 2000 requires every local authority to prepare a constitution and keep it up to date. There are no direct budget implications arising from this report.
Options: (If any)	Buckinghamshire Council is legally required to have a constitution. Member views on the draft Constitution have been obtained. Areas still to be resolved are highlighted within the report.
Reason:	Amendments to any areas or matters still to be resolved can be incorporated into the draft. Textual amendments will still be required and are appropriate for delegated authority to the Monitoring Officer in consultation with the Leader.

## **1. Purpose of Report**


- 1.1 To put in place the Constitution of Buckinghamshire Council prior to vesting day on 1 April 2020.

## **2. Executive Summary**

- 2.1 The arrangements for the transition from the existing district and county council to the new Buckinghamshire Council are set out in the Buckinghamshire (Structural Changes) Order 2019 (the SCO).
- 2.2 One of the requirements of the SCO is that the Shadow Authority must formulate proposals for the executive arrangements that are to be operated by Buckinghamshire Council. The SCO requires that these proposals are for a leader and cabinet executive within the meaning of 9C(3) of the Local Government Act 2000.
- 2.3 A Constitution Members Working Group was established to oversee the development of a draft Constitution. The Members Working Group was chaired by Councillor Martin Tett. The draft Constitution has been developed by officers from across the five predecessor councils led initially by the interim Monitoring Officer and then the Monitoring Officer, overseen by the Members Working Group.
- 2.4 The Members Working Group met a number of times to discuss and guide development. Two earlier versions of the document were also circulated to Workstream leads across all areas of the five current councils as well as to the Member Working Group. Members of the Shadow Executive have also provided feedback on version 10 of the document.
- 2.5 The draft Constitution is available at Appendix 1. Although the document is navigable via the contents page you may need to adjust the view settings on your browser. In addition the diagrams within the document may not be fully accessible at this time. Cross-referencing, document links (both inside and outside the document), some formatting and some paragraph numbering also need to be finalised after final amendments are incorporated.
- 2.6 Areas or matters still to be resolved are detailed within the body of this report.

## **3. Content of Report**


### Structure of the Consttution

- 3.1 The draft Constitution is divided into 10 parts: summary; public participation; Council; committees; Cabinet; joint arrangements; scrutiny; councillors; officers; and interim arrangements.
  - 3.2 Each part contains all relevant explanations and rules. For example the roles, responsibilities and procedures for Council, Cabinet and committees are all set out separately under their relevant part. The scheme of delegation is detailed within Part I - Officers.
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## Scheme of delegation (Part I)

- 3.3 The scheme of delegation to officers deals with all delegations (ie for both executive and non-executive functions). It delegates by exception. Therefore the general delegation gives powers to deal with all matters within the area of responsibility subject to limitations and exceptions.
- 3.4 The general powers in relation to staffing, finance, legal and contracts are given some detail and for clarification details of the general powers within the planning and highways responsibilities are also set out.
- 3.5 Delegations in relation to High Speed Rail are specified to ensure that Buckinghamshire Council does not lose its qualified authority status (see paragraphs 2.18 and 2.19).
- 3.6 There are general limitations requiring consultation with members when exercising delegated powers where appropriate. It is considered that as harmonisation across departments or service areas will take some time this allows flexibility for members and directors to decide when this should occur and change requirements as harmonisation progresses. This qualification is also detailed in the legal exceptions – for example there are currently differing procedures for authorisation of enforcement action across the different councils and this therefore allows flexibility in relation to minor matters. Being able to delegate further also means that urgent matters will not be held up.
- 3.7 The legal advice provided was also that all formal legal action taken in Court should be via Legal Services as should any instructions to external legal advisers including Counsel. If appropriate these delegations can be further delegated by the Service Director.
- 3.8 Although not a delegation itself, the requirement to produce written records and publicity has been included in the scheme of delegation as it relates to how delegations will be exercised. It is anticipated that the vast majority of decisions will be published under existing procedures including in registers (eg planning applications). These provisions reflect current legal requirements.
- 3.9 Items or matters still requiring resolution:

## Joint Arrangements

- 3.10 Joint arrangements between one or more of the predecessor councils and external agencies or bodies which are to be included in the Constitution cannot be unilaterally changed by Buckinghamshire Council in relation to membership or any other terms of reference.
- 3.11 As such the current terms of reference may not be relevant to Buckinghamshire Council and it is suggested that they are not reproduced within the Constitution at this time to avoid confusion. However neither can updated terms of reference be included until they are formally agreed by all parties.
- 3.12 All such bodies have been contacted for arrangements to be made to update the terms of reference where appropriate. It is proposed that the Constitution therefore includes links to external websites giving access to the terms of reference but not setting them out in the Constitution.
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## Planning

- 3.13 The terms of reference of the Strategic Sites Committee and the Area Planning Committees are included within the constitution. It is good practice to produce local guidance about the operation of the planning committees and a separate Planning Protocol will therefore be produced as an appendix to the constitution. This will be a guidance document only and not a formal part of the constitution. At the time of writing this report, the draft Planning Protocol is being refined further in terms of tone and focus. It is intended that the draft will be finalised in agreement with the Leader and the Portfolio Holder for Planning prior to referral to the Shadow Authority.

## Settling legal actions

- 3.14 The legal exceptions chart (section 2.29 in Part I) gives authority to the Service Director Legal and Democratic Services to settle legal proceedings or processes.
- 3.15 The Shadow Executive should note that this figure has been set at £500,000 to be consistent with land and property thresholds after which the decision will be referred to Cabinet. Other circumstances could make this a key decision notwithstanding a proposed settlement is below £500,000 in which case the decision would still be referred to Cabinet.

## Proper Officers

- 3.16 The list of Proper Officers is contained in Part I. These have not all been designated but any updates to a designation would be a minor change which can be made by the Monitoring Officer under delegated powers. Any un-specified roles would fall to the Chief Executive.

## General

- 3.17 The draft Constitution has been prepared on the basis of best practice by the predecessor councils and local government guidance. It is however recommended that the operation of the Constitution is reviewed after one year and updated as necessary to ensure that it is applicable and practical for Buckinghamshire Council and its residents.

## **4. Financial Implications**

- 4.1 There are no direct financial implications arising from this report.

## **5. Legal Implications**

- 5.1 These are detailed within the body of this report.

## **6. Other Key Risks**

- 6.1 Buckinghamshire Council is required to have a constitution from 1 April 2020.

## **7. Dependencies**



7.1 None save as detailed within the report and that communications to all officers and members as well as training on the new procedures will be required.

## **8. Consultation**

8.1 As detailed in the Executive Summary.

## **9. Communications Plan**

9.1 An update and summary for officers and members will be required. This will need to include reference to where the adopted Constitution can be accessed, what is included, how to find relevant sections and its requirements from 1 April 2020. A gap analysis of where these are different from predecessor councils to inform targeted briefing notes and/or training is also suggested.

## **10. Equalities Implications**

10.1 The document is a reference tool and will not itself have a direct impact on groups with the protected characteristics. However as a reference tool it must comply with accessibility requirements. The current document will be updated to ensure this is the case. Equalities implications will be kept under review and updates provided if there is any change.

## **11. Data Implications**

11.1 None – the draft Constitution is a reference tool and does not have any direct implications on personal data.

## **12. Next Steps**

12.1 Subject to the views of the Shadow Executive both generally and in relation to relevant outstanding items, the draft Constitution will be recommended to a meeting of the full Shadow Authority. A Scheme of Member Allowances will be recommended at the same meeting.

12.2 Once approved and all amendments (if any) and updates made, accessibility issues will be addressed and training and communications rolled out.

<b>Background Papers</b>	Buckinghamshire (Structural Changes) Order 2019 Local Authorities (Executive Arrangements)(Meetings and Access to Information) Regulations 2012 Local Government Act 1972
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