

Wiltshire Council

Full Council

24 July 2024

Proposed Changes to the Constitution

Summary

This report asks Full Council to consider proposed changes to the Constitution as recommended by the Standards Committee.

Proposals

That Council approve the following updated sections of the Constitution:

- 1) Part 10 – Contract and Procurement Rules
- 2) Protocol 11 – Arrangements for dealing with Code of Conduct Complaints

Reason for Proposals

To ensure that the constitution remains up to date and effective.

Perry Holmes - Director, Legal & Governance (and Monitoring Officer)

Proposed Changes to the Constitution

Purpose of Report

1. This report asks Council to consider proposed changes to the following sections of the Constitution:
 - Part 10 – Contract and Procurement Rules
 - Protocol 11 – Arrangements for dealing with Code of Conduct Complaints (including incorporating the Local Assessment Criteria)
2. The changes have been recommended by the Standards Committee.

Background

3. The Standards Committee has responsibility for oversight of the Council's constitution and making recommendations to Council.
4. The Standards Committee has established the Constitution Focus Group to review sections of the Constitution and present it with proposals to consider.
5. The Focus Group met on 3 April 2024, 10 June 2024, and 24 June 2024 to consider the above sections of the Constitution.
6. The Standards Committee met on 2 July 2024 to consider the proposed changes.

Relevance to the Council's Business Plan

7. Changes are required to be made to Part 10 of the Council's Constitution (Procurement and Contract Rules) to comply with incoming UK procurement legislation and the proposed changes support the Council's business plan in various ways set out below.
8. **Section 1 - Empowered People and Section 2 – Resilient Society.** Much of the support, advice, accommodation and services etc used by the residents of Wiltshire is obtained through contracts that have been awarded as result of a procurement process. In order that those processes are of good quality and compliant to relevant UK procurement legislation and policy, there is a need to ensure that Part 10 is current and reflective of relevant changes. Failure to do so could mean that our procurement and contracting processes are not compliant which could open the Council to costly and time-consuming challenges. Dealing with such challenges could create a risk of disruption to service delivery. Ensuring that the right changes happen at the right time would support sections 1 and 2 of the business plan.
9. **Section 3 – Thriving Economy.** New UK procurement law sets out clear expectations around engagement with Small to Medium Enterprises (SMEs) and how procurement activity can improve their participation in bidding for contracts when advertised. The

proposed changes to Part 10 seek to ensure the Council will be supporting SMEs to participate in procurement processes which in turn should support local workforce development and associated benefits.

10. **Section 4 – Sustainable Environment.** The proposed changes to Part 10 seek to support the outcomes associated with a sustainable environment. Contracts awarded as part of procurement processes need to be conducted in accordance with the relevant UK procurement legislation to ensure that the Council is free to commence such processes and reduces the risk of challenge. Failure to do so could impact the speed at which the Council can award contracts that support the outcomes of achieving a sustainable environment.
11. **Section 5 – Wiltshire Council.** The proposed changes to Part 10 seek to ensure that our procurement activity aligns with the relevant UK procurement law, updated policies and ambitions in respect of value for money, social value, support of small and medium-sized enterprises, commercial and procurement delivery and skills and capability for procurement, which are set out in the National Procurement Policy Statement (currently under consultation). Doing so will seek to ensure that the Council's ambitions to continue to be a healthy organisation that is forward thinking and embracing change as well as helping to achieve expectations set out in respect of social value and tackling the climate emergency are supported.

Main Considerations

Part 10

12. Part 10 was last updated in May 2019 to reflect practice and UK and European procurement law in force at that time.
13. When the UK exited from the European Union this triggered the need to review and implement new procurement legislation, which is due to come into force on the 28 October 2024.
14. As part of the creation of the new legislation, the Government set out its expectations in respect of transparency ambitions in public sector procurement and contract management. This is at the heart of the new legislation. The Council has, and is continuing to, update its processes and policies so that we are compliant with UK procurement law which brought about the need to review Part 10.
15. In addition to the need to review Part 10 to ensure compliance with the Procurement Act 2024, there was a need to consider updates to reflect current practice, to remove contradictions, and ensure that it did not contain unnecessary operational 'process' information and to ensure that it was future-proof as far as is reasonably practicable.
16. The Focus Group considered the changes at two meetings and agreed a number of small changes, which were subsequently approved by the Standards Committee.
17. The proposed changes are set out in Appendix 1

Protocol 11

18. Under Section 27 of the Localism Act 2011, all local authorities must promote and maintain high standards of conduct by their members and co-opted members, including by adopting a code of conduct setting out the behaviour that is expected of members when acting in their official capacity.

19. Under Section 28 of the Localism Act 2011, principal authorities such as Wiltshire Council must have in place arrangements under which allegations of misconduct can be investigated and determined. Protocol 11 of Wiltshire Council's Constitution sets out the process the council follows in assessing and determining such allegations.
20. At present, Protocol 11 (Appendix 1) sets out the overall process for considering Code of Conduct complaints, and a separate document, the Local Assessment Criteria (Appendix 2), provides the Assessment Sub-Committee with further guidance on factors to consider when assessing such complaints. The current versions of both documents were last updated in July 2019 and have been in force since January 2020. Since that time, experience gained by officers, members and the council's appointed Independent Persons has highlighted parts of both documents that require correction or clarification.
21. The changes proposed have been discussed with:
- Members of the Standards Committee's Assessment Sub-Committee, which assesses allegations of member misconduct when requested to do so by the Monitoring Officer.
 - The council's three Independent Persons, appointed under Section 28 (7) of the Localism Act 2011, and whose views may be sought before a decision is made on an allegation of misconduct or who may be consulted by a member who is the subject of a complaint.
 - The Standards Committee's Constitution Focus Group, which has approved the changes proposed.
22. At present, there is some overlap between Protocol 11 and the Local Assessment Criteria in terms of content and purpose. To provide greater clarity for everyone involved in the complaints process, it is proposed that content from both documents be combined into a single, new Protocol 11, with the separate Local Assessment Criteria document being removed.
23. The proposed new Protocol 11 includes a significant amount of textual change, but the key amendments aim to provide:
- a) Consistent use of terminology.
 - b) Clarity around timescales for the submission, assessment and determination of complaints.
 - c) More information about the role of Independent Persons.
 - d) Clarity around the process followed by the Monitoring Officer when exploring 'alternative resolution'.
 - e) More guidance for complainants on providing sufficient information when submitting complaints.
 - f) A more comprehensive list of reasons why complaints may not proceed.
 - g) Greater clarity around the options available to the Monitoring Officer when an investigation is completed.
 - h) Greater clarity and detail around the process followed by the Hearing Sub-Committee, including during the pre-hearing stage.
 - i) A new requirement that an Independent Person must be consulted before the council departs from the arrangements set out in the Protocol.
 - j) Information on the role of the Local Government and Social Care Ombudsman (LGSCO) and its contact details.

k) Greater clarity around requirements for confidentiality.

24. The following documents are provided:

Appendix 2a	Proposed new Protocol 11 without track changes or comments
Appendix 2b	Proposed new Protocol 11 with track changes and comments

25. Procedural rules for the Assessment Sub-Committee were approved by the Standards Committee on 2 July 2024 to reflect the above documents, in the event Full Council approves the changes to the constitution.

Overview and Scrutiny Engagement

26. The Constitution Focus Group includes a representative from Overview and Scrutiny, and changes to all parts have been reviewed by its members.

Safeguarding Implications

27. There are no safeguarding implications.

Public Health Implications

28. There are no public health implications.

Procurement Implications

29. Ensuring that Part 10 represents UK procurement law will support the Procurement Team to deliver good quality, compliant procurement processes.

30. Failure to adopt the changes to Part 10 could see the Council either act outside of the Constitution or UK procurement law making the Council open to challenge.

Equalities Impact of the Proposal

31. There are no equalities implications.

Environmental and Climate Change Considerations

32. There are no environmental implications.

Workforce Implications

33. There are no workforce implications.

Risks that may arise if the proposed decision and related work is not taken

34. Failure to amend Part 10 of the Council's Constitution as recommended will mean:

- It references outdated UK and European law and policy therefore it will not be aligned with new and changing UK procurement legislation.
- The content is not reflective of current processes and good practice.

- The Council will not be acting in line with what it has set out in the Constitution in conducting its procurement activity in accordance with new and updated UK procurement legislation.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

35. No risks have been identified if the proposed actions are taken.

Financial Implications

36. There are no financial implications.

Legal Implications

37. Legal Services has collaborated with the Procurement Team in re-drafting Part 10 of the Council's Constitution, taking into consideration the current processes and those required by the imminent change in law.

38. Legal Services confirms that the decision being sought is in line with the Council's Constitution including budget and policy framework, the Financial Regulations and the incoming UK Legislation and guidance as it is drafted to date.

39. Failure to change our policies and processes in response to changes to the law could give rise to challenges which will present a cost and time pressure to the Council.

40. An increased risk of challenge is likely to cause disruption to service delivery while matters are concluded.

41. By adopting the proposed changes to Part 10 this will seek to ensure that the Council remains compliant with UK procurement law and sets out the expectations for officers when they are seeking to undertake procurement activity.

Proposals

42. To recommend Full Council approve changes to the following sections of the Constitution:

- Part 10 – Contract and Procurement Rules
- Protocol 11 – Arrangements for dealing with Code of Conduct Complaints (including incorporating the Local Assessment Criteria)

Perry Holmes - Director, Legal and Governance (and Monitoring Officer)

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Appendices:

Appendix 1a – Proposed Part 10 (clean version)

Appendix 1b – Proposed Part 10 (tracked changes)

Appendix 2a – Proposed new Protocol 11 without track changes or comments

Appendix 2b - Proposed new Protocol 11 with track changes or comments

Background Papers

[Current Protocol 11](#)
Local Assessment Criteria