

Significant Changes List

The information shown is in the below format:

- Draft constitutional rule as proposed
- A) Officer Comments (if any)
- B) External Legal Comments (if any)

Please note that this is a working document and will be updated as meetings of the working group and Democracy and General Purposes Committee continue.

Specific Issues that are due to be resolved in the near future are:

- Nuisance and/or Serious Service Failing
- Overview & Scrutiny Committee – Call-In Rights
- Definition of Key (Other Material or De Minimis) Decisions
- Members’ Access to Information

<u>PART A – CORE PROVISIONS</u>	
<u>A1, 2 (Purpose of this constitution)</u>	
External Legal Comment	My view remains that the wording in the current constitution more accurately reflects the purpose of a constitution than the proposed wording
<u>A1, 2.5. (Purpose of this constitution)</u>	
"Enabling Local Residents opportunities to be heard and to participate directly in the proceedings of the Council, the Committees and the Executive	
External Legal Comment	The issue regarding the definition of "local residents" and the fact that people do not have to reside locally to be able to have a say in how the Council runs if they are affected by its decisions and services still needs to be resolved
<u>A1, 3.3: (Structure of this constitution)</u>	
<i>"The Parts and provisions of this Constitution should not conflict. Where provisions in this Part A conflict with any provision in any other Part of this Constitution, the provisions in this Part A shall prevail".</i>	
Officer Comment	Conflict between rules should be avoided and in the event that there is a conflict, consideration should be given to best practice, legislation and case law in determining the appropriate action.
External Legal Comment	I still think this is unnecessary, will cause significant practical problems and is not the way documents would normally be interpreted.

A2, 1 (The Residents)

1.1 Rights of Local Residents

"Residents of the Borough of Maidstone and users of its services ("Local Residents") shall have the following rights in respect of the Council. These are subject to the Rules of Procedure in Part C of this Constitution where they pertain to the proceedings of the Council".

Officer Comment	Local Residents rather than Members of the public; how would this be interpreted?
External Legal Comment	See comments on A1. 2.5 above

A2, 3.4 (Rights of Members to Access Information & Meetings)

For information purposes only; to be decided in February 2022.

"3.4.1. An elected Member is entitled by virtue of his or her office to have access to all documents in the Council's possession, including those containing Exempt or Confidential Information, and to attend all meetings of a member body even where the public have been excluded, where he or she has a need to know.

3.4.2. Any officer or body with delegated authority to make a decision under this Constitution determining whether a Member has a need to know shall consider the prima facie existence of that need to know where: -

- (a) The Member sits on the relevant Member body considering the matter or is likely to sit on that body as a substitute.*
- (b) The Member is considering exercising or is exercising any Rights in Respect to Proceedings summarised in Provision 3.5 below in connection with such a matter; or*
- (c) The information relates directly to matter the Member's role in representing their Ward.*

This is subject to there being exceptional circumstances where it would be manifestly unreasonable for the council to acknowledge a need-to-know certain information and/or where disclosure of that information to the Member would be contrary to some other enactment.

3.4.3. The Access to Information Procedure Rules in Part C seek inter alia to apply this principle, subject to the proviso that where there is any conflict in the application of those Rules and the principles in this Provision 3, the principles in this Provision 3 shall prevail".

Officer Comment	<p><u>In relation to 3.4.1;</u> Elected Members are not entitled to all Information by virtue of their position. Evidenced by case law, Counsel's advice to D&GP (2019) and the need to know arising from Schedule 12A LGA 1972.</p> <p><u>In relation to 3.4.2 a);</u> Likely to sit as a Substitute does not constitute a need to know, as by actively sitting as a Substitute that Member would be given any Part II papers.</p> <p><u>In relation to 3.4.2 c);</u> This depends on the assessment of a 'need to know' by the Proper Officer/MO.</p> <p><u>In relation to 3.4.3;</u> There should not be conflict within the constitution. The need to know arises from statutory principles.</p>
External Legal Comment	In my view it still does not accurately reflect the law and the committee will need to be given full and detailed legal advice on this point (as will full Council when it ultimately considers the constitution).
<p><u>A2, 6.3.1 (The OSC)</u></p> <p><i>"There shall be an OSC of the council consisting of 13 Members who are not Members on the Executive plus up to 2 non-Members co-opted in accordance with the Rules of Procedure".</i></p>	
Officer Comment	This could lead to an unwieldy committee.
External Legal Comment	None.
<p><u>A2, 6.5.4 (Disputes Panel, D&GP ToR)</u></p> <p>"The Functions of the Democracy & General Purposes Committee shall include:</p> <p>-</p> <p><i>(c) Via its Disputes Panel, determining individual Member complaints and grievances as to the application of this Constitution and the rights of Members</i></p>	

under it, albeit without prejudice to the role of those Members presiding at meetings”.

Officer
Comment

Undermines the role of the Proper Officer/MO in determining application of the constitution and AtI and the role of Democratic Services in providing procedural advice. This could lead to worsening relationship between Officers and Members, particularly with the Chairman and could lead to a lack of trust. There is a further risk of inappropriate or illegal decisions being made.

At the Dec. 2021 meeting of the Working Group, the Disputes Panel was agreed however it was noted that further consideration on the operation of the panel was required, e.g. whether it would prevent a decision's implementation.

Members on the panel would need appropriate advice and expertise in terms of data protection on AtI. This could be used to halt a decision from being implemented.

External
Legal
Comment

None.

A2, 7.5 (The Administration's Programme)

"7.5.1. By the latter of sixty (60) days from his or her election or at the Annual Meeting, the Leader and/or the Executive shall submit to Full Council for consideration & approval the Administration's Programme for the remainder of the Municipal Year.

7.5.2. Where Full Council does not approve the Administration's Programme within the timescales set out in Provision 7.5.1 above, with or without amendments agreed by Full Council, the Executive and the Officers shall use their best endeavours to secure that such a programme, acceptable to the majority of Members, is approved. In this event, a proposal for the Administration's Programme shall be put to each meeting of Full Council until one is approved.

7.5.4. Where the Administration's Programme is approved by Full Council and contains particular pledges within the scope of Executive Functions that are not in conflict with the existing Budget & Policy Framework, each of those particular pledges shall then form priority items for consideration by the Executive and not require prior consideration by a Policy Advisory Committee. This shall not prevent the Leader or a competent member of the Executive choosing to place the matter before a PAC nevertheless”.

Officer Comment	<p><u>In relation to 7.5.1;</u></p> <p>Another Council meeting may be needed to align with the 60-day period, otherwise work and decision making to implement the actions within the programme could be delayed.</p> <p><u>In relation to 7.5.2;</u></p> <p>Practical implications of re-presenting the administration programme until approved:</p> <ul style="list-style-type: none"> - The Executive could not independently make decisions on the items until approved, so this could delay the decision-making process; - If progress was to be made, the issue could be presented to PACs initially, but once approved then dealt with solely by the executive. This could cause conflict. (see 7.5.4) <p><u>In relation to 7.5.4;</u></p> <p>This could lead a lack of pre-decision scrutiny on particularly important issues; Key Decision rules will apply. The PACs may want to see items on the programme, although 7.6.2 outlines that items agreed within the programme do not have to be considered by PACs. This rule could be misused and become a method to avoid scrutiny, through the use of expansive issue titles and extensive programme topics.</p>
External Legal Comment	None.

PART B – RESPONSIBILITY FOR FUNCTIONS

B1, 4 (Responsibility for Local Choice functions)

Table outlining responsibility for local choice functions; does not include a column for Officers.

Officer Comment	This table is from the TWBC Constitution, but the column showing the Officer Delegations has been removed, which implies that the functions can only be exercised by Council. This could conflict with the Officer delegations shown later in Part B.
External Legal Comment	None – Local Choice Functions checked and they sit with district authorities.

B4, 1.1.1 (Functions of Other Committees; Policy Advisory Committees)

"b) Where the Leader has assigned portfolios of limited scope to individual Members on the Executive, such that material matters in the Default Scheme are not so assigned to any Member, the Proper Officer in consultation with the Leader of the Council shall assign such matters to one or more PACs".

Officer Comment	Further clarification required; what does this mean? Suggests that PACs receive material matters not assigned to an Executive Member which would mean PACs were making decisions?
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External Legal Comment	None.
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PART C – RULES OF PROCEDURE

C1, 8 (Presentation of Petitions)

"8.2. No more than three (3) petitions may be presented per meeting.

8.3. Where a petition is presented: -

8.3.1. Only one person may speak to a petition for a maximum of five (5) minutes. They should have signed the petition, be a Local Resident and be a supporter of the body submitting the petition. This may include someone acting for that petitioner in a professional capacity.

8.3.2. At a Council meeting, at the conclusion of the speech of the presenter, a debate will take place on the petition for up to a period of twenty minutes or if the petition has at least 1,500 signatures, with no time limit on the debate. The debate should take place with the intention that the petition and the views of the Council will then be referred to the appropriate Committee. The debate will be subject to normal council debating rules with the exception that at the end of the debate no vote will be taken, but the petitioner will have an opportunity to speak for a further period of three (3) minutes responding to the issues raised in the debate.

8.3.3. If the Mayor determines that it is inappropriate to debate the petition as a separate item at Full Council, then the petition will be considered later at the same Council meeting in conjunction with any report that has been placed on the agenda concerning the matter raised in the petition.

8.3.4. Any report relating to the subject matter of the petition will be placed on the agenda immediately following the presentation of petitions or in the order petitions are presented if more than one petition is presented at the meeting".

Appendix A – Petition Scheme

1. *The Council welcomes petitions from Local Residents. Subject to para.2 below, all petitions received by the Council that are signed by at least 100 Local Residents will be presented or reported to the relevant Member Body.*
2. *The Member body to which a petition is presented or reported shall depend on whether or not it pertains to an Executive Function and the number of signatories.*
 - 2.1 *For Executive Functions where the number of signatories is at least 1,000 Local Residents, the petition shall go to the Executive;*
 - 2.2 *For Executive Functions where the number of signatories is fewer than 1,000 Local Residents, the petition shall go to the relevant Committee;*
 - 2.3 *For non-Executive Functions where the number of signatories is at least 1,000 Local Residents, the petitions shall go to Full Council.*
 - 2.4 *For non-Executive Functions where the number of signatories is fewer than 1,000 Local Residents, the petition shall go to the relevant Committee. Where the petition concerns a matter not otherwise within the competence of a Committee, the petition shall go to the Democracy & General Purposes Committee.*

Officer Comment

In relation to 8.2:

This removes the Mayor's (current) discretion.

The rule and appendix combined have removed the following:

- Mayor's discretion to accept a petition that falls short of the two-week notice and 100 signature requirements.
- Mayor's discretion for a debate to take place and the provision of a factual briefing note from officers; this is helpful for Councillors and is then included within the relevant Committees agenda once referred.

Also allows debate on a petition that has not been formally presented.

In relation to Appendix A:

The number of signatures required for a petition to be presented to full council has risen to 1,000.

	<p>In the current constitution:</p> <ul style="list-style-type: none"> - petitions with 100 signatures can be presented to a meeting of Full Council; - following the debate at full council, the petition would be referred to the appropriate decision-making body.
External Legal Comment	None.
<p><u>C1, 12.14 (Motions on Notice)</u></p> <p>Outlines requirements on Motions on Notice.</p> <p><i>"This Rule 12 is subject to the over-riding requirement that any motion before the Full Council concerning a Member's rights to access information or documents must be determined by the Full Council".</i></p>	
Officer Comment	Needs further consideration as this would involve disclosing confidential/exempt information.
External Legal Comment	This clause creates significant practical problems and is inconsistent with other parts of the constitution. If a member is not entitled to a document as a matter of law but the issue can be referred to full council then in order to determine whether the information should be provided the Council will need to see the information which means the member will see it even if they are not entitled to it! This should not be included.
<p><u>C1, 17 (Previous Decisions and Motions)</u></p> <p>Same as existing, except the following has been removed:</p> <p><i>'Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months'.</i></p>	
Officer Comment	This could lead to an issue being consistently re-presented to Council; this is impractical.
External Legal Comment	None.

Chapter 2 – Committee Procedure Rules

C2, 2 (Appointments to Committee)

2.1 "The Proper Officer shall appoint Members to Committees in accordance with the wishes of the Group Leaders and the Scheme of Seat Allocations agreed by Full Council".

Officer
Comment

None

External
Legal
Comment

Strictly Council appoints committees and members though it must give effect to the proportionality rules in the 1989 Act and regulations. The wording in the current constitution, "Appointments to Committees are made at the Annual Council Meeting or, when a vacancy occurs, at the next available meeting of the Council." Is a more accurate representation of the law.

C2, 2.5 (Members as Substitutes on Committees)

Specifically;

"2.5.1 For each Committee, the Proper Officer shall appoint a minimum of the three (3) Members belonging to each Political Group, up to the number of Committee seats allocated to that Political Group, who may act as Substitutes on that Committee.

2.5.2 A Member who acts as a Substitute on a Committee may sit at meetings of that Committee in place of a Member on that Committee belonging to the same Political Group, where that Full Member is either absent from that meeting or opts to attend that meeting as a Visiting Member instead.

2.5.4 Members may attend meetings as Substitutes only:

c) if the Full Member leaves before the conclusion of the meeting a substitute can be made if it has been notified when the item is called on the Committee agenda".

Officer
Comment

In relation to 2.5.1;

Currently have up to six substitutes per group.

In relation to 2.5.4;

This is currently allowed (see comment below)

External Legal Comment	<p><u>In relation to 2.5.1;</u></p> <p>What if a group does not have 3 Members who can act as Substitutes? In the current constitution it is up to 6. Also in my view it would be better if these were appointed by full council, though the law on substitutes generally is a little vague.</p> <p><u>In relation to 2.5.4;</u></p> <p>Whilst the law is not clear on this point it is in my view doubtful whether substitution for a single item or part of an agenda as opposed to the meeting as a whole would be lawful. It is not a practice I am aware of other authorities adopting.</p>
<p><u>C2, 3.6 (Chairing Meetings)</u></p> <p><i>"The Committee Chairman shall chair each meeting of that Committee. In his or her absence, the vice-Chair shall chair the meeting unless the vice-Chair opts to remain at the meeting but not take the chair".</i></p>	
Officer Comment	The purpose of the Vice-Chairman to act in the event that the Chairman is unavailable. The option to refuse this, at any time with no reason, reduces accountability.
External Legal Comment	None
<p><u>C2, 7 (Call-In and Urgency)</u></p> <p><i>"7.1 The call-in procedure set out above shall not apply where the decision being taken by the executive is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public interest...The decision proposed shall be regarded as reasonable in all the circumstances and be treated as a matter of urgency unless the Chairman of Overview and Scrutiny and the political group leaders by simple majority, disagree..."</i></p>	
Officer Comment	Requiring group leaders' agreement is restrictive; this could be misused and small groups would wield a disproportionate amount of power. (not standard practice)
External Legal Comment	None.

C2, 8.4 (Exclusion of the Public & Press)

"In accordance with the Access to Information Procedure Rules, a Committee meeting: -

8.4.1. Shall go into closed session where Confidential Information is to be discussed

8.4.2. May go into closed session where Exempt Information is to be discussed in relation to an item.

This means that the press and members of the public shall be excluded from the meeting. No such exclusion however shall apply to any elected Member, including any Visiting Member".

Officer
Comment

None

External
Legal
Comments

See comments on Member Access to Information.

C2, 11.8 (Points of Order)

In explaining the point of order;

"The Member must indicate the Provision, Rule or Law and the way in which he or she consider it has been broken. The ruling of the Member Chairing the meeting on the matter will be final".

Officer
Comment

Conflicts with the disputes panel; would the Chairman be subject to the Dispute Panel?

External
Legal
Comment

None.

C2, 14.2 (Referral of Enforcement Matters to the Planning Committee)

Outlines the process for Member Agenda Item Requests in relation to enforcement.

Officer
Comment

Planning Committee received updates and the Head of Planning and Development often discharges their delegation for this purpose; Given the Planning Committee's workload and that it is regulatory in nature, it may be impractical to add to the agenda

	<p>for the Committee and Officers; as the latter is then required to provide a report when reasonable notice is given. What is reasonable notice?</p> <p>The SPI Committee's KPIS include the no. of enforcement cases;</p> <p>Specific enforcement matters would be confidential in nature and require Part II Papers.</p>
External Legal Comment	None.
<p><u>Chapter 3 – Executive Rules of Procedure</u></p> <p><u>C3, 2.3 Sub-delegation of Executive Functions</u></p> <p><i>"2.2.1-Where the Executive, a Committee of the Executive or an individual Member on the Executive is responsible for Executive Functions, they may delegate further to Joint Arrangements or an Officer</i></p> <p><i>2.2.2-Even where Executive Functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated".</i></p>	
Officer Comment	<p>This is the same as in the 2014 Constitution, however the Leader's discretions have been removed; contained the below points:</p> <p><i>b) Unless the Leader directs otherwise, if the Leader delegates functions to the Executive, then the Executive may delegate further to a committee of the Executive or an officer.</i></p> <p><i>c) Unless the leader directs otherwise, a Committee of the Executive to whom functions have been delegated by the Leader may delegate further to an officer.</i></p>
External Legal Comment	None.
<p><u>Part C3, 2.3: (Conflicts of Interest)</u></p> <p><i>"Unless a dispensation to vote has been given:</i></p>	

Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Chapter D2 of this Constitution.

If every Member on the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Chapter D2 of this Constitution.

If the exercise of an Executive Function has been delegated to a Committee of the Executive, an individual Member or an Officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Chapter D2 of this Constitution".

Officer Comment	Assumption of a dispensation being given. Slightly different to 2014 Constitution which is clearer:
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	<p><i>Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution. If the Leader has a disclosable prejudicial interest or an Other Significant Interest, the matter under consideration shall be dealt with by the Cabinet excluding the Leader.</i></p> <p>If every Member of the Executive has a <i>disclosable prejudicial interest or an Other Significant Interest</i> this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.</p> <p>If the exercise of an Executive function has been delegated to a Committee of the Executive, an individual Member or an officer, and should a (DPI)<i>prejudicial interest or Other Significant Interest arise</i>, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.</p>
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External Legal Comment	None.
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C3, 2.5 (Manner of Decision Making)

"2.5.4 The powers of an individual Member on the Executive shall be exercised by them personally save where they are unable to act owing to absence or illness, when they may be exercised on their behalf by another Member on the Executive who has been nominated for the purpose by the Leader and the Proper Officer has been given written notice of such nomination.

2.5.5 A Key Decision or Other Material Decision does not take effect until it has been signed by the Leader or a Member on the Executive and has been counter-signed by the Proper Officer”.

Officer
Comment

In relation to 2.5.4:

Should this include OSI/DPIs?

In relation to 2.5.5:

This would prevent a decision from being implemented until signed.

External
Legal
Comment

None.

C3, 3.8 (Meeting Agenda)

"3.8.1 - Any Member on the Executive may require the Proper Officer to ensure that an item is placed on the agenda of the next available meeting of the Executive for consideration whether or not authority has been delegated to the Executive, a committee of the Executive, any individual Member on the Executive, or Officer in respect of that matter.

Officer
Comment

Should the Leader be responsible for the agenda items as Chairman?

External
Legal
Comment

Previous comments:

Matters should be limited to Executive functions.