

## COUNCIL

24 January 2022

### AMENDMENTS TO THE CONSTITUTION

#### Report of the Monitoring Officer

|                                |   |                           |
|--------------------------------|---|---------------------------|
| Strategic Aim:                 | All   |                           |
| Exempt Information             | No  |                           |
| Cabinet Member(s) Responsible: | Cllr K Payne, Portfolio Holder for Finance, Governance and Performance, Change and Transformation |                           |
| Contact Officer(s):            | Marie Rosenthal, Deputy Director for Corporate Governance   | mrosenthal@rutland.gov.uk |
| Ward Councillors               | All   |                           |

#### DECISION RECOMMENDATIONS

That Council approves the proposed amendments to the Constitution set out in the Report:

1. Update the Terms of Reference for the Employment and Appeals Committee.
2. Update Part 10 of the Rutland County Council Constitution: Contract Procedure Rules.
3. Designate the Electoral Services Manager as Deputy Electoral Registration Officer.

#### 1 PURPOSE OF THE REPORT

- 1.1 This report sets out several proposed amendments recommended by the Constitution Review Working Group to the Terms of Reference for the Employment and Appeals Committee and Part 10 of the Rutland County Council Constitution: Contract Procedure Rules.
- 1.2 It is also recommended that the role of the Deputy Electoral Registration Officer be reviewed. It is recommended that the designation be updated to the Electoral Services Manager to better reflect operational responsibilities.

#### 2 PROPOSED CHANGES TO THE EMPLOYMENT AND APPEALS COMMITTEE TERMS OF REFERENCE.

- 2.1 At its meeting on the 10 November 2021, following a request from the Employment and Appeals Committee on 7 July 2021, the Constitution Review Working Group noted that the Terms of Reference for the Employment and Appeals Committee are out of date and agreed to recommend the following amendments to Council.

2.2 The remit of the Employment and Appeals Committee is set out in Part 3 of the Constitution with the proposed changes included as follows:

### 8.1 **Employment**

- a) *To establish panels to appoint Chief Officers and Officers that are part of the Strategic Management Team. Such Panels to consist of three members of the committee plus the relevant Cabinet Member [(s)]. Political balance applies to the panel.*
- b) *To consider employee procedures, including dismissal procedures.*
- c) *To hear, consider and determine appeals against dismissal by employees in line with procedures agreed by the Committee.*
- d) *The constitution of any ~~special human resources~~ [Appeal or Hearing] panels or working parties as may be required from time to time.*
- e) *The discharge of such human resources functions that cannot be delegated under statute to the Cabinet or have not been delegated to officers, as may be delegated by the Council from time to time.*
- f) *To consider and approve HR policies (this requires two thirds voting members present to approve a policy subject to its financial impact not exceeding the [Budget] ~~virement threshold of the Strategic Director for Resources~~. If this cannot be achieved the policy in question will be referred to Full Council for further consideration and determination).*

### 8.2 **Appeals Panels**

8.2.1 *To hear, consider and determine any other appeals made under a statutory appeals process and/or where no other appeals body has been established for the specific purpose. ~~This will include:~~*

- ~~• Access to Personal Files~~
- ~~• Approved Marriage Premises~~
- ~~• Curriculum Complaints~~
- ~~• Home to School Transport~~
- ~~• Housing Improvement Renovation or Repair Grants~~
- ~~• Discretionary Rate Relief (NDR)~~
- ~~• Children's Social Services Complaints~~

8.2.2 *The panel will consist of three members drawn from the Committee. For this purpose, officers may draw upon members to ensure sufficient members are available to conduct the hearing, and to avoid involving any member who was involved in the original decision which is the subject of the appeal. ~~Panel members should not be a representative of the Ward of the appellant. Panels should consist~~*

~~of three members of the Committee, except for (vii) which should comprise two members of the committee and an independent chair. Political balance applies to any such panel and appropriate training will be provided in relation to the subject matter.~~

### ~~8.3 — Delegation to Officers~~

~~8.3.1 The Director for Resources is authorised to deal with day-to-day administration of Human Resources matters.~~

2.3 The reasons for the proposed changes are:

2.3.1 Minor changes to 8.1 (a) and to 8.1(d) to better reflect the Employment Processes of the Council.

2.3.2 A minor change to 8.1(f) to ensure that any Policy changes made by the Committee remain within the budget allocated by Council. It should be noted that if the Committee wished to make a change that had a budgetary impact this could still be done through a recommendation to Council.

1.1.1 Amendments to 8.2.1 and 8.2.2 to remove the out-of-date references and to reflect the fact that Councillor involvement in matters is dealt with in the Code of Conduct or through the Councillor seeking advice on bias or predetermination.

## **3 PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES**

3.1 The Contract Procedure Rules set out the Rules that Officers must follow when instigating contracts and grants with external organisations to ensure that the Council operates within the relevant procurement legislation and guidance.

3.2 Since the last review of the Rules, the UK has left the European Union and consequently the references to EU legislative requirements are no longer valid and have been replaced by the UK Government with UK equivalents. These changes have required several small updates to the Rules to remain compliant with the new UK legislation, guidance, and national processes.

3.3 Rutland County Council's Internal Audit complete an audit each year to establish compliance with the Contract Procedure Rules by Officers. The last audit conducted in early 2021 highlighted several rules where there was potential ambiguity of interpretation and consequently as part of the current review of the Rules this has been addressed.

## **CHANGES RELATING TO EXIT FROM THE EU**

3.4 The UK procurement regulations and processes were set within EU legislation. In January 2021, when the UK left the EU, changes were made to the requirements on UK public bodies.

3.5 The UK has adopted the same thresholds for procurements as previously stood under the EU but are now referred to as UK Tender Thresholds.

3.6 The requirement to publish tender opportunities in the Official Journal of the European Union, has now been replaced with a requirement to published in the new UK Find a Tender service. The requirements for when to publish remain the same.

3.7 The Procurement Regulations 2015 remain unaltered.

### **CHANGES AS A RESULT OF INTERNAL AUDIT RECOMMENDATIONS**

3.8 The Internal Audit report: Contract Compliance 2020-21 noted two recommendations for clarification:

3.8.1 Rule 16.5 regarding signing of Call-Off contracts from Frameworks.

3.8.2 The current Rules require all such contracts to be signed by Chief Officer, regardless of value. Internal Audit recommended that instead, signing of such contracts should be made by the relevant officer in line with Financial Procedure Rule limits, if the authorisation to proceed with a Call-Off contract has been properly approved. This rule has therefore amended.

3.8.3 Rule 17.3 regarding the extension of contracts where an extension is provided for in that contract.

3.8.4 Internal Audit recommended that clarification was needed to ensure consistency in approach as the Rule was open to interpretation. The Rule has been reworded to clarify. In addition, Rule 17.4 regarding the extension of contracts where no extension is provided for in the contract has similarly been reworded to clarify.

3.8.5 During the same audit, Internal Audit raised a query regarding how Grants were dealt with and whether there was an explicit process in place. Although this was not a recommendation in the final report, an additional section has been added to the Rules to clarify this and ensure a consistent approach is taken across the organisation.

### **ADDITIONAL PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES**

3.9 Three further changes are proposed to streamline processes and remove unnecessary steps:

3.9.1 Approval of Exemptions, Award of procurements valued £25,000pa to £49,999pa. Amended to require approval from the relevant Director only and remove additional requirement for approval from the Monitoring Officer and Director of Resources.

3.9.2 Retention of Exemption Approval Forms. Amended to require the Responsible Officer to retain, rather than require the Commissioning Team to store on behalf of other officers. This will ensure exemption approvals are stored with the other paperwork for each contract.

3.9.3 Release of electronic tenders. Amended to allow Welland Procurement Unit to release bids directly to the Responsible Officer for the contract, rather than release them to an officer from the Commissioning Team for them to pass on. This will remove an unnecessary step in the process.

3.10 None of these changes result in any change to the overall responsibility of relevant Officers. Throughout the document references to 'Strategic Management Team (Chief Officer)' have been amended to 'Chief Officer'. This brings the terminology in line with other areas of the Constitution. The definition of Chief Officer is included in Appendix A of the CPRs for clarity.

## **4 DEPUTY ELECTORAL REGISTRATION OFFICER**

- 4.1 The Elections Team are responsible for compiling and maintaining the Registers of Electors. This includes carrying out an annual canvass, carrying out house to house enquires, ensuring the Register is accurate, complete and up to date and maintaining a register of absent voters.
- 4.2 The Council must appoint a senior officer of the Council to be the Electoral Registration Officer (ERO) responsible for these functions and this is usually the Chief Executive, as is the case at Rutland. The statutory duties of the ERO are complex and set out in legislation.
- 4.3 The Deputy ERO is set out in the Officer Scheme of Delegation in Part 3 of the Constitution and historically has been the Strategic Director of Resources. The Chief Executive and Strategic Director for Resources have agreed, subject to Council approval, that the Electoral Services Manager becomes the designated Deputy ERO to recognise their role in the day-to-day delivery of these functions.

## **5 CONSULTATION (MANDATORY)**

- 5.1 The Constitution Review Working Group has been consulted on the amendments to the Employment Appeals Committee Terms of Reference and Contract Procedure Rules. Subsequent minor amendments following their feedback have been made.
- 5.2 The amendments to the Contract Procedure Rules have also been shared with Welland Procurement Unit, who provide RCC's procurement advice, to ensure that the amendments remain within procurement regulations.
- 5.3 The Chief Executive and Strategic Director for Resources have been consulted on the proposed change to the designation of Deputy Electoral Registration Officer.

## **6 FINANCIAL IMPLICATIONS (MANDATORY)**

- 6.1 There are no financial implications of the changes.

## **7 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 7.1 Amendments to the Council's Constitution are the responsibility of Council.
- 7.2 The changes to the Contract Procedure Rules will bring them in line with amended requirements resulting from the UK's exit from the EU. The Rules remain in compliance with procurement regulations.

## **8 DATA PROTECTION IMPLICATIONS**

- 8.1 A Data Protection Impact Assessment (DPIA) has not been completed because there is no data processed as part of the Employment and Appeals Terms of Reference or Contract Procedure Rules.

## **9 EQUALITY IMPACT ASSESSMENT**

- 9.1 An Equality Impact Assessment (EqIA) has not been completed because the amendments to **THE** Employment and Appeals Terms of Reference or Contract

Procedure Rules do not relate to a process or provision which involves people.

## **10 COMMUNITY SAFETY IMPLICATIONS**

10.1 There are no community safety implications arising from the proposed changes.

## **11 HEALTH AND WELLBEING IMPLICATIONS**

11.1 There are no health and wellbeing implications arising from the proposed changes.

## **12 ORGANISATIONAL IMPLICATIONS**

12.1 The amendments to the Rules once approved will be shared with Officers and existing guidance provided to support procurements and contracts will be updated accordingly.

## **13 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

13.1 The amendments to the Contract Procedure Rules are designed to bring the Rules in line with revised UK regulations, processes, and guidance.

13.2 The amendments are designed to clarify where Internal Audit have identified ambiguity, and to streamline processes where this makes no material change to the responsibilities of relevant Officers.

13.3 The remaining amendments are required to keep the Constitution up to date and reflect working practices.

## **14 BACKGROUND PAPERS**

14.1 There are no additional background papers to this report.

## **15 APPENDICES**

15.1 Appendix A – Table of Proposed Amendments to the Contract Procedure Rules January 2022

15.2 Appendix B - Amended Contract Procedure Rules January 2022 with Tracked Changes

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**

## Appendix A. Amendments to the Contract Procedure Rules January 2022

The Contract Procedure Rules have been renamed 'Contract and Grant Procedure Rules' to reflect that they apply to grants as well as contract.

| Rule            | Amended Rule   | Reason for amendment  |
|-----------------|--|---|
| 1.3.2           | Now includes interim and agency staff  | This is an addition for clarity. A new process has been established to ensure that the identification and use of agency and interim staff is appropriately managed.   |
| 1.3.5           | Amended to show the legislation under which such arrangements are made. The Clauses referred to set out the full definitions.  | As, and if, the legislation is amended this Rule will remain up to date.  |
| 1.4             | <i>Additional Rule:</i> The provision of Grants to external organisations is dealt with separately under Rules 19.1 to 19.8  | Rule 19 provides clarity on the giving of grants to external organisations, which was not previously explicitly dealt with in the Rules. This was raised by Internal Audit during the 2020/21 Compliance Audit although was not contained within the final recommendations of that Audit.   |
| 1.5             | Whilst 1.3.5 and 1.3.6 are not covered by these Rules, these contracts must be approved by the relevant Chief Officer, in consultation with the appropriate Portfolio Holder. The Public-to-Public Contract Exemption Request Form must be used. | Simplified process for approval of exemptions, it is the relevant Director's responsibility and does not require additional approval from the Monitoring Officer or Director Resources as currently set out. This amendment to the approval process is also applied to Rules: 4.2 exemptions; 11.10 procurements valued between £25,000 p.a. and £49,999 p.a.; and 16.3 award of contracts from Frameworks. |
| 2.14.4 & 2.14.5 | Additions referring to officers' required actions in undertaking due diligence   | This is already referred to under specific Rules but added here for clarity. This is also added under specific types of procurement for further clarity.  |
| 4.2             | Removal of requirement for Exemptions to be approved by Chief Officer, Monitoring Officer and Director of Resources  | The relevant Chief Officer is responsible for contracts within their Directorate, the addition of approvals by the Monitoring Officer and Director of Resources are unnecessary additional steps in the process.  |
| 4.3             | The original signed version of the Exemption Request Form must be held by the Responsible Officer.   | Removal of requirement for the Exemption to be sent to the Commissioning Team. The responsibility for holding the   |

|               |   |  |
|---------------|---|--|
|               |   | procurement and contract paperwork is that of the Responsible Officer. There is no reason for the Exemption Request to be held by the Commissioning Team separately.   |
| 4.5 & 4.6     | Addition of further requirements for Contracts Register and Contracts Finder publication in line with regulatory requirements   | Clarification to ensure compliance with regulations  |
| 10.13 & 10.14 | Additional of Responsible Officer requirement to undertake due diligence  | This is already referred to in the Rules but included for clarity. This amendment is repeated in subsequent sections.  |
| 11.1 to 11.3  | No amendments to the Rules  | Section rearranged for clarity.  |
| 11.5          | Removal of reference to 'hard copy' and 'fax'   | Bids are no longer accepted in these formats.  |
| 12.14.4       | Standard Suitability Questions (the suitability questions must not be modified, without advice from Welland Procurement).   | Removal of requirement for advice from the Commissioning Team, Welland provide our specialist procurement advice. This amendment is repeated in subsequent sections.   |
| 12.16         | Tenders shall be received via the electronic tendering system, ProContract, where a representative of Welland Procurement will be responsible for unsealing the tenders and releasing to the Responsible Officer, as well as maintaining an independent corporate Tender log. | Removal of the additional step in the process for Welland release to the Commissioning Team, who then forward on to the Responsible Officer. The amendment streamlines the process.  |
| 16.1          | Addition of what compliance with a Framework includes   | Further information for clarity and to ensure Officer compliance with the relevant Terms and Conditions  |
| 16.7          | The call-off contract may be signed by the relevant Officer in accordance with financial limits if Rule 16.3 has been met.  | This amendment is in response to an Internal Audit recommendation to allow contracts to be signed by officers (in line with the financial limits set out in the Financial Procedure Rules), rather than all Framework Contracts having to be signed by a Chief Officer, regardless of their value. |
| 17.3          | <i>Reworded Rule:</i> Extension of Contracts where the extension is allowed for within the contract   | This amendment is in response to an Internal Audit recommendation. The section has been reworded to clarify authorisation process for extensions in the varying circumstances. The process itself and requirements to approve extensions have not been amended.                                    |

|              |  |  |
|--------------|--|--|
| 17.4         | <i>Reworded Rule:</i> Extension of Contracts where the no extension is allowed for within the contract | This section has been reworded to clarify authorisation process for extensions in the varying circumstances. This is in response to Internal Audit queries. The process itself and requirements to approve extensions have not been amended. |
| 19.1 to 19.9 | <i>New section:</i> Grants   | This is a new section to deal specifically with the process for and approval of awarding Grants to external organisations. This was not dealt with explicitly previously.  |
| Appendix 3   | Variable Information updates   | To update contact details for internal officers  |

In addition, throughout the Rules, references to the EU have been replaced with the relevant UK equivalent.