

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**COUNCIL**

**14 July 2011**

**Report of the Monitoring Officer**

**Part 1- Public**

**Matters For Decision**

**1 CHANGES TO CONSTITUTION**

**Summary**

**This report deals with changes to the Constitution to reflect changes in legislation and in working practices**

**1.1 Contract Procedure Rules**

- 1.1.1 The Contract Procedure Rules are contained in part 4 of the Constitution and govern the procedures and working practices which must be followed by officers when letting Council contracts.
- 1.1.2 Contract Procedure Rule 3.3 sets out what terms should be included in all contracts with a value over £5,000 and rule 3.3.7 refers to the ability of the Council to cancel any contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) of the Local Government Act 1972.
- 1.1.3 The Bribery Act 2010 will replace the Prevention of Corruption Acts 1889 to 1916 with effect from 1 July 2011 and authority is therefore sought for the Monitoring Officer to amend CPR 3.3 to refer to the Bribery Act 2010 instead of the Prevention of Corruption Acts 1889 to 1916.
- 1.1.4 The public sector equality duty is now in force under the Equality Act 2010 and requires the Council to consider equality issues in its decision making processes and in carrying out its functions. It is therefore proposed to reflect this in rule 1.2 and 10.1.5 by identifying equality issues as a matter to be taken into consideration when carrying out purchasing where appropriate.
- 1.1.5 A minor change is required to rule 5.3.6 to change the threshold at which officers are required to place details of contract opportunities on the Council's contracts register from £15,000 to £20,000 to make this more workable in practice.
- 1.1.6 In addition a change is proposed to the threshold in rules 5.3.7 to match the threshold in rule 5.3.6 so that proper records of all contract award procedures,

waivers, exemptions and extensions are maintained with separate files for each purchase of a value of over £20,000 rather than £15,000.

- 1.1.7 The Chair of the Procurement OSG has requested that authority be delegated to the three statutory officers to amend these two thresholds, which are purely administrative in nature, in the future without the need to bring a report to full Council to make these rules more workable in practice.

## **1.2 Standards Committee – Independent Members**

- 1.2.1 The initial term of office for the 2 Independent Members of the Standards Committee, Mr David Ashton and Mr John Gledhill, expired on 30 June 2011. Both Mr Ashton and Mr Gledhill were appointed following a full recruitment process i.e. advertisement, an assessment of their suitability by a panel of Members and approval by full Council.

- 1.2.2 At least 25 per cent of the members of the Standards Committee must be independent. The Chairman of the Committee must also be an independent member.

- 1.2.3 Given the current uncertainty regarding the future of the standards regime, and in particular the proposal to abolish the national framework for ethical standards, it is considered preferable to retain Mr Ashton and Mr Gledhill, both of whom are experienced members of the Committee, rather than to try to recruit and appoint new members.

- 1.2.4 It is therefore proposed to extend the term of office for both Mr Ashton and Mr Gledhill by a further 3 years (which may be terminated by 2 months notice on either side), by which time we should have some certainty over the proposals to reform the standards regime.

## **1.3 Other amendments to constitution**

- 1.3.1 There are 2 further minor amendments to the Constitution in respect of which I seek the approval of Members.

- 1.3.2 At the meeting of Council on 17 May 2011 it was resolved that the Standards Committee will be renamed Standards and Training Committee upon abolition of the existing national framework for ethical standards. In the meantime it was resolved that a Training Committee be established as an interim measure, comprising those Borough Councillors sitting on the Standards Committee. An amendment to the Constitution will be required to give effect to the establishment of the Training Committee.

- 1.3.3 At the meeting of Cabinet on 22 June it was resolved, subject to the approval of Council, to establish a Member panel for the purpose of assessing grant applications for the Community Enhancement Fund, and making recommendations to the Cabinet Members for Communities and Finance.

Presently the Constitution provides that a Cabinet Member decision shall not have effect until a written report on the matter has been considered by an Advisory Board or Area Planning Committee, and the Board/ Committee has recommended that the decision be made. In order to facilitate the speedy and effective processing of grant applications, it is proposed to amend the Constitution so as to permit Cabinet Member decisions in relation to the Community Enhancement Fund to be made solely upon the recommendation of the Member panel

#### **1.4 Legal Implications**

- 1.4.1 Article 15 in part 2 of the Constitution sets out the procedure for review and revision of the Constitution. Changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

#### **1.5 Financial and Value for Money Considerations**

- 1.5.1 None.

#### **1.6 Risk Assessment**

- 1.6.1 If the changes are not made to the Constitution to deal with the legislation then officers will not be able to enforce its provisions effectively and efficiently.

#### **1.7 Equality Impact Assessment**

- 1.7.1 See 'Screening for equality impacts' table at end of report.

#### **1.8 Policy Considerations**

- 1.8.1 None.

#### **1.9 Recommendations**

- 1.9.1 The Monitoring Officer be authorised to amend the Constitution to give effect to the changes outlined in the above report.
- 1.9.2 The three statutory officers be authorised to change the financial thresholds contained in contracts procedure rules 5.3.6 and 5.3.7 from time to time.
- 1.9.3 The term of office for the 2 independent members of the Standards Committee, Mr David Ashton and Mr John Gledhill, be extended until 30 June 2014 (which may be terminated by 2 months notice on either side).

Background papers:

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Nil

Adrian Stanfield  
Monitoring Officer

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision will enforce the public sector equality duty in relation to purchasing.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The public sector equality duty will be implemented in purchasing procedures as appropriate.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*