

Brighton & Hove City Council

Council

Agenda Item 10

Subject: Adoption of a New Council Constitution

Date of meeting: 16 May 2024

Report of: Corporate Director – Corporate Services

Contact Officer: Name: Elizabeth Culbert
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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 At its meeting on 28th March 2024 the Council formally resolved to change its governance arrangements by moving to a leader and cabinet executive system on 16 May 2024 at the Annual Council meeting.

1.2 This report outlines the feedback from public consultation, summarises key features of the new arrangements and presents the Council's new Constitution for adoption.

2. Recommendations

That full Council

2.1 Approves the new Constitution for Brighton & Hove City Council with effect from 16 May 2024 as set out at Appendix 1;

2.2 Approves the meetings timetable set out at Appendix 2;

2.3 Notes that, following the outcome of consultation regarding public engagement, further work will now commence to develop additional public engagement opportunities;

2.4 Authorises the Chief Executive, following consultation with the Monitoring Officer, to take all steps necessary or incidental to the implementation of the new Constitution;

2.5 Authorises the Monitoring Officer to make minor alterations to correct any typographical, formatting or other presentational errors, including any changes considered necessary to ensure consistency between the new Constitution documents and to take all steps necessary to comply with the requirements for publicity and inspection of the Constitution.

3. Context and background information

3.1 The Council is under a statutory duty to prepare and keep up to date its constitutional arrangements (Section 9P Local Government Act 2000). It is

also a requirement of the Council's Constitution that the Constitution is monitored and kept under review.

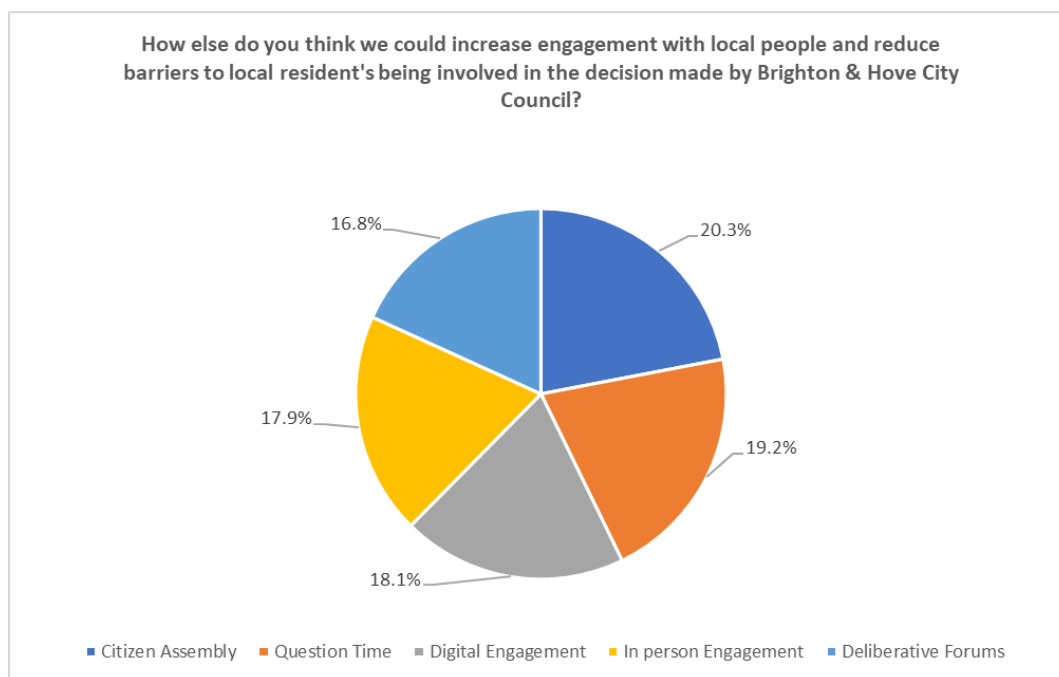
- 3.2 On 28th March 2024, full Council formally resolved to cease operating a committee system and to change its governance arrangements to a leader and cabinet executive system from 16 May 2024. Full Council approved the publication of the required statutory notice and Summary of Proposals and resolved to receive the new Constitution for adoption on 16 May at its Annual General Meeting, with a view to the new arrangements coming into force with immediate effect.
- 3.3 The rationale for the change and a summary of the proposed new arrangements were debated at [Strategy, Finance & City Regeneration Committee on 14 March](#) and at full Council on 28 March.
- 3.4 This report presents the new Constitution to full Council for adoption, highlighting the outcome of consultation on public engagement arrangements and key features of the new system.

4. Public Engagement

- 4.1 In accordance with the full Council decision of 28 March, a public consultation was undertaken from 18 March to 19th April 2024 inviting residents to give their views about ways they could play a bigger part in the work of the Council. The consultation questions included asking about the best ways to include local people in the Council's formal decision making process as well as how else the Council could increase engagement with local people and reduce barriers to participation.
- 4.2 167 people responded to the consultation. A number of respondents raised concerns about a potential reduction in opportunities for resident participation under the new governance system, with several mentioning the importance of deputations at council meetings. There was a call from a notable number of respondents to maintain current engagement opportunities at Council meetings which allow direct public involvement in the decision making process through public questions, petitions and deputations.
- 4.3 In response to the question regarding how the Council could increase engagement and reduce barriers to participation, there was a call for multiple methods of engagement, including in-person meetings, online platforms and traditional mailings to ensure everyone can participate. Suggestions included using Zoom for remote participation, engaging with schools and youth councils and making events accessible to parents by allowing children to attend.
- 4.4 There was equal support for each of the different proposed new engagement options of Citizens Assemblies, Question Time, Digital Engagement, In Person Engagement and Deliberative Forums, as illustrated in Table 1 below. Respondents wanted the Council to consider the needs of people with disabilities more thoroughly, involve community representatives

in the design process and ensure that local voluntary organisations with expertise are represented. Many respondents felt excluded due to a 'digital first' approach, suggesting a reliance on digital platforms and social media can be exclusive and that the Council's website is often not user friendly.

Table 1: Consultation responses



Response to Consultation and Next Steps

- 4.5 In response to the consultation, the following arrangements for Public & Member Engagement in formal decision making meetings are proposed in the new Constitution.

Public Engagement at full Council, Cabinet and Committees

- 4.6 The new Constitution incorporates all of the current opportunities for engagement by members of the public at full Council meetings and Committee meetings and extends these opportunities to Cabinet meetings and Overview & Scrutiny Committee meetings. This includes public questions, deputations and petitions. These are set out in the Council Procedure Rules, Committee Procedure Rules and Executive Procedure Rules as well as in the Council's Petitions Scheme (in relation to Petitions).
- 4.7 There is therefore the opportunity for continued public engagement, with the full range of current engagement options being retained and extended to Cabinet and Overview & Scrutiny Committee meetings. The Council's website will be updated to ensure clear guidance is provided and the Council's Democratic Services Team will also be on hand to speak to residents to explain their engagement options.
- 4.8 The Council will publish and maintain a Forward Plan of all decisions to be taken by Cabinet as well as publishing the Overview & Scrutiny Annual Work

Programme once this is agreed. The Forward Plan will give at least 28 days' notice of decisions to be taken at Cabinet. The publication of a Forward Plan is a significant new step in improving transparency of decision making by the Council. The Chair will manage the timing of public engagement items at the monthly Cabinet meetings, with an expectation of 30 minutes for public questions, 15 minutes for deputations and 15 minutes for petitions.

- 4.9 The Constitution sets out that all Key Decisions will be taken at meetings of full Cabinet (unless there are grounds for urgency). This will ensure maximum transparency and will further clarify and simplify access and engagement opportunities for the public.
- 4.10 The above arrangements respond to the consultation feedback and ensure that current engagement opportunities are retained.

Member Engagement at full Council, Cabinet and Committees

- 4.11 Elected Members will continue to have the same opportunities for questions and debate at full Council and Committees as under the committee system, including opportunities for oral and written questions to full Council, Notices of Motion to full Council and submitting questions and member letters to Committees, including Overview & Scrutiny Committees. In addition, the following arrangements are included for member questions and member representations at Cabinet meetings:-

Member Questions at Cabinet

- 4.12 Any Member will be able to attend and ask a question at Cabinet meetings relating to an item on the Forward Plan for that meeting and subject to notification of the question in advance. The Chair will manage the timings for the engagement elements of the meeting, with a 15 minute slot being set aside for member questions.

Member Representations at Cabinet

- 4.13 In addition, Opposition Group Leaders, or their Deputies, may make representations on any item which is listed on the agenda for a Cabinet meeting, subject to notifying Democratic Services of their wish to make a representation and the item number to which the representation relates. The available time for representations will be 15 minutes and will be divided to enable a total of 5 representations by Opposition Group Leaders (of 3 minutes each).

Additional Engagement Opportunities

- 4.14 With regards to the proposals to enhance engagement through increasing the range and methods of engagement, for example by introducing Citizens Assemblies, Questions Times and/or Deliberative Forums, the consultation has highlighted the importance of multiple methods of engagement from digital engagement to in-person co-production which:

- Recognises the diverse needs and preferences of community members, offering flexibility and accessibility across different communication channels;
- Enhances inclusivity and representation by accommodating varying levels of digital literacy and technological access;
- Can be embedded in future engagement efforts to expand reach and diversity.

4.15 The Council's Policy, Partnerships and Scrutiny Team will now review residents' ideas for engagement with member feedback to create and deliver additional engagement opportunities for residents.

5. Structure of the New Constitution and Key Features

General

5.1 The matters that must be included in local authority constitutions are prescribed by the Local Government Act 2000 Section 9P and the draft Constitution is based on the 'Modular Constitution for English Local Authorities'. This provides a template for the structure of the document followed by almost all English Councils. The Constitution is set out in full at Appendix 1.

5.2 The Constitution is divided into parts to make sure that, as far as possible, related matters are grouped together. These are:

Part 1: Summary and Articles

A summary and overview.

Part 2: Allocation of Responsibilities

Sets out the responsibilities of full Council, Committees, the Cabinet and Officers.

Part 3: Rules of Procedure

The procedures for Council, Committees and Cabinet meetings.

Part 4: Regulations, Codes and Protocol

Such as financial, procurement and Codes of Conduct.

5.3 The key elements of the new Constitution are highlighted below. A review has been undertaken to revise all parts of the Constitution to make them 'Executive fit', that is to reflect the move to a Cabinet System and to remove references to Policy Committees. The Scheme of Delegations to Officers in Part 2F and the Regulations, Codes and Protocols in Part 4 are otherwise unchanged.

Budget and Policy Framework Procedure Rules

- 5.4 The Budget and Policy Framework Procedure Rules in Part 3D of the Constitution govern the process for the development and final approval of the council budget and the policy framework. The policy framework is a set of the most important plans and strategies the Council has. They are required to be approved by full council. A full list of these plans and strategies is set out in Part 2A of the Constitution.

The Cabinet

- 5.5 The Allocation of Responsibilities to Cabinet set out in Part 2E of the Constitution outlines the position regarding the executive and is largely derived from legislation. These provisions vest all executive powers in the Leader, who may delegate them to individual Cabinet Members, a Committee of the Cabinet or to Officers. Part 2E lists the functions of the Leader and the individual Cabinet Portfolio holders.
- 5.6 Under the Local Government Act 2000 (Section 9E) the arrangements for determining responsibility for executive functions are for the Leader, not the Council, to decide. The arrangements set out in Part 2E are therefore subject to the approval of the Leader, who may approve them as they are, modify them or replace them by a new scheme of delegations at any time.
- 5.7 The Executive Procedure Rules are set out in Part 3B of the Constitution. These Rules state that all Cabinet meetings will be held in public unless discussing confidential or exempt items and state that all Key Decisions will be made by Cabinet collectively. Key Decisions are defined as:-
- (a) an executive decision which is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates; or
 - (b) an executive decision which is likely to be significant in terms of its effects on communities living or working in an area of two or more wards.
- 5.8 A decision is significant for the purposes of para (a) above if it involves expenditure or the making of savings of an amount in excess of £1m. Guidance in relation to para (b) is included as an Appendix to the Allocation of Responsibilities document at Part 2E.

Overview and Scrutiny

- 5.9 Three Overview & Scrutiny Committees are established:
- Health Overview & Scrutiny Committee;
 - People Overview & Scrutiny Committee;
 - Place Overview & Scrutiny Committee.

- 5.10 The Terms of Reference and Membership for these Committees are included in Part 2B of the Constitution and the Procedures for these meetings are included in Part 3C. In addition to elected members, a number of co-optees are invited as members of each of these Committees.
- 5.11 It is envisaged that Overview & Scrutiny Committees will be involved in policy development by being consulted at an early stage on major policies, especially those forming part of the policy framework. In addition, the Committees will be able to carry out in-depth reviews by setting up task & finish panels.
- 5.12 The Committees will also scrutinise the delivery of Council services, and other relevant services in the City, and may call-in Key Decisions which have been made by the Executive but not yet implemented. Call-in will be subject to a threshold of 6 councillors across two Groups or one Group and Independent Members. This threshold takes into account guidance from the Centre for Governance and Public Scrutiny regarding the need for call-in to be used rarely. The Guidance states:

‘...call-in must be subject to some form of restriction – in keeping with the fact that it should be seen as a long-stop, used rarely. In order for this principle to be upheld, call-in arrangements must, practically, place hurdles which have to be overcome for a call-in to be considered “valid”. We should stress that putting such hurdles in place is not only legal, it is also a specific component of the legislation and formal guidance on this subject. Not to do so risks call-in being in-effective’. CfGPS The use of call-in; guidance for English authorities, April 2023.

Regulatory Committees, Other Committees and Boards

- 5.13 The arrangements for Planning Committee and Licensing Committees are unchanged in the new arrangements. The Health and Wellbeing Board has updated terms of reference to reflect the removal of the executive Council functions relating to Adult Social Care and Health, as well as updated membership.
- 5.14 The Audit, Standards & General Purposes Committee has the existing Audit and Standards functions with the addition of non executive functions that are not specifically delegated to another Committee or Sub Committee of the Council, such as the adoption of HR policies and determination of rights of way issues.
- 5.15 The Terms of Reference for the Sussex Health Care Assembly are also updated to reflect changes in membership and the appointment of an independent chair.

Meetings Timetable

- 5.16 A copy of the proposed updated meetings timetable is attached at Appendix 2 for approval.

Member Training and Development Opportunities

- 5.17 Training is being arranged for Members and Officers in support of the implementation of the new arrangements.

Next Steps

- 5.18 The first Cabinet Meeting will take place on 27 June and the Forward Plan indicating the items to be considered at that meeting will be published on 28th May 2024. Other Committee and Council meetings will take place in accordance with the Meetings Timetable at Appendix 2, with all agendas published on the Council's website in the usual way.
- 5.19 It is proposed to continue to keep the operation of the new Constitution under review to ensure that it is working as intended and to identify any changes that may be required. It is also proposed to review the Council's Contracts Procedures by December 2024 to consider the adoption of a published Procurement Forward Plan, which would enable greater oversight and transparency of Council commissioning.

6. Analysis and consideration of alternative options

- 6.1 The Council resolved to change its governance arrangements on 28 March and therefore this report is implementing that decision by bringing forward a new Constitution for a Leader and Cabinet executive.

7. Community engagement and consultation

- 7.1 The consultation outcome on public engagement is set out in Part 3 of this report.

8. Conclusion

- 8.1 Council recommended to approve the new Constitution for adoption with immediate effect.

9. Financial implications

- 9.1 The new constitution has financial implications across Democratic Services support, Policy, Partnerships & Scrutiny (PPS) support and Members allowances. For Democratic Services and PPS support, the teams are being restructured to support the new arrangements, including overview and scrutiny, and this is expected to be cost neutral on an ongoing basis. However there is a need for additional staffing resources during 2024/25 to facilitate a smooth transition to the new system and this is estimated to cost £0.080m which will be met from holding certain roles vacant within the Corporate Services Directorate and therefore there will be no financial impact overall.
- 9.2 Members allowances have been reviewed by the Independent Remuneration Panel (IRP) and their recommendations are included

elsewhere on this agenda.. Any changes adopted by full Council following the recommendations made by the IRP will be reflected in budget monitoring reports during 2024/25.

Name of finance officer consulted: James Hengeveld Date consulted :07/05/24

10. Legal implications

- 10.1 The new Constitution complies with the requirements of the Local Government Act 2000 (as amended) and relevant secondary legislation and guidance.

Name of lawyer consulted: Elizabeth Culbert Date consulted 010524

11. Equalities implications

- 11.1 The Council has a public sector equality duty under s149 of the Equality Act 2010. In the exercise of its functions the Council must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act and must advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those that do not.

- 11.2 It is not anticipated that there will be negative impacts to people sharing protected characteristics as a result of the proposals set out in this report. Meetings held in public will continue to ensure accessibility arrangements are in place. Feedback from the consultation on public participation arrangements has been assessed for equality impacts and the proposals have been adapted to ensure that all existing routes for engagement are maintained. Further engagement opportunities will be developed as set out at paragraph 4.14-4.15 which will seek to enhance public participation through the use of multiple channels of engagement. A wide range of co-optees are proposed for our Overview & Scrutiny Committees to ensure that communities and the voices of those with lived experience are heard.

12. Sustainability implications

- 12.1 There are no adverse sustainability implications arising from the proposals. The overall number of committee meetings will be reduced under these proposals, which will impact positively on travel and printing requirements for members, officers and members of the public.

Supporting Documentation

Appendices

1. Appendix 1: Constitution of Brighton & Hove City Council

Introduction and summary

Part 1 - Articles

- Article 1- The constitution
- Article 2 - Members and the Council
- Article 3 - Citizens and the Council
- Article 4 - the Mayor
- Article 5 - Full Council
- Article 6 - Decision-making
- Article 7 - The Executive
- Article 8 - Officers

Part 2 - Allocation of Responsibilities

- 2 A - Terms of reference of Council
- 2 B - Terms of reference of Committees and sub-committees, including HWB
- 2 C - Overview and Scrutiny Committees Terms of reference
- 2 D - Joint Arrangements
- 2 E - Allocation of Responsibilities to Leader and Cabinet
- 2 F - Scheme of Delegation to Officers
- 2 G - Functions not to be the responsibility of the Executive

Part 3 - Rules of Procedure

- 3 A - Council procedure rules
- 3 B - Executive Procedure Rules
- 3 B1 - Appendix to Executive Procedure Rules
- 3 C - Committee procedure rules
- 3 C 1 - Overview and Scrutiny Procedure Rules
- 3 D - Budget and Policy Procedure rules
- 3 E - Access to Information Procedure Rules
- 3 F - Petitions Scheme

Part 4 - Regulations, Code, Protocols

- 4 A Financial Regulations
- 4 A1 Financial Standing Orders
- 4 B Contract Procedure rules
- 4 C Officer Employment Procedure Rules
- 4 D Code of Conduct for Members
- 4 D1 Arrangements regarding the Register of Members' Interests
- 4 D2 Practice Note - Use of Council Facilities
- 4 D3 Guidance to Members and Officers on appointments to outside bodies
- 4 E- Members' Planning Code and 4 E1 Public Question at Planning
- 4 F Code of conduct for Member-Officer relations
- 4 G Code or Corporate Governance
- 4 H Scheme for Members (to follow once Scheme approved)
- 4 I Code of recommended practice on local authority publicity
- 4 J Code of conduct for Officers

2. Appendix 2 - Meetings Timetable