



Gloucestershire

COUNTY COUNCIL

CONSTITUTION COMMITTEE

Wednesday, 4 February 2015

**Cabinet Suite - Shire Hall,
Gloucester**

MEETING PAPERS



CONSTITUTION COMMITTEE

TIME: 2pm (or on the rise of the Cabinet, whichever is later)
DATE: Wednesday, 4 February 2015
VENUE: Cabinet Suite - Shire Hall, Gloucester

A G E N D A

ITEM	TOPIC	CONTACT
1.	Apologies for absence	Joanne Bolton
2.	Minutes (Pages 1 - 4) To approve the minutes of the meeting held on 10 December 2014.	Joanne Bolton
3.	Public Questions To answer any written public questions about matters which are within the powers and duties of the Committee. The closing date for receipt of questions is 10am on 28 January 2015. To answer any oral question(s) put by members of the public with the consent of the Chairperson. <i>Depending on the nature of the questions asked it may not be possible to provide a comprehensive answer at the meeting, in which case a written answer will be supplied as soon as reasonably possible after the meeting.</i>	Joanne Bolton
4.	Members' Questions To answer any written members' questions. The closing date for the receipt of questions is 10am on 28 January 2015.	Joanne Bolton
5.	Report of the Independent Remuneration Panel (Pages 5 - 10) To consider the report and recommendations of the Panel.	Richard Blamey

6. **Pensions Board - terms of reference** (Pages 11 - 22)
Please find attached the report which went to the Pension Committee on 23 January 2015, the appendices of which have been amended to reflect the comments made by members. Jo Walker
7. **Contract Standing Orders** (Pages 23 - 36)
To consider the attached report. Graham Collins
8. **Monitoring Officer changes to the Constitution** (Pages 37 - 38)
To consider the attached report. Jane Burns

NOTES

- (a) **MEMBERSHIP** – Cllr Colin Guyton, Cllr Mark Hawthorne, Cllr Jeremy Hilton, Cllr Paul Hodgkinson, Cllr Nigel Moor, Cllr Brian Oosthuysen, Cllr Ray Theodoulou, Cllr Lesley Williams and Cllr Will Windsor-Clive
- (b) **DECLARATIONS OF INTEREST** – Members requiring advice or clarification about whether to make a declaration of interest are invited to contact the Monitoring Officer: Jane Burns ☎ 01452 328472 /fax: 425149/e-mail: jane.burns@gloucestershire.gov.uk prior to the commencement of the meeting.
- (c) **INSPECTION OF PAPERS AND GENERAL QUERIES** - If you wish to inspect reports relating to any item on this Agenda or have any other general queries about the meeting, please contact

Simon Harper, Head of Democratic Services

☎: 01452 425230/fax: 425850/e-mail: simon.harper@gloucestershire.gov.uk

EVACUATION PROCEDURE - in the event of the fire alarms sounding during the meeting please leave as directed in a calm and orderly manner and go to the assembly point which is outside the main entrance to Shire Hall in Westgate Street. Please remain there and await further instructions.

CONSTITUTION COMMITTEE

MINUTES of the meeting of the Constitution Committee held on Wednesday 10th December, 2014 commencing at 3.00 pm.

PRESENT MEMBERSHIP:

Cllr Colin Guyton	Cllr Brian Oosthuysen
Cllr Mark Hawthorne	Cllr Ray Theodoulou
Cllr Jeremy Hilton	Cllr Lesley Williams
Cllr Paul Hodgkinson	Cllr Will Windsor-Clive
Cllr Nigel Moor	

78. MINUTES

The minutes of the meeting of 9 June 2014 were approved as a correct record and signed by the Chairman.

79. PUBLIC QUESTIONS

No public questions were received.

80. MEMBERS' QUESTIONS

No questions from members were received.

81. REVIEW OF REVISED PROCEDURE FOR COUNCIL QUESTIONS

81.1 The Committee reviewed the change to Procedural standing order 2.1 in part 4 of the Constitution, which was amended so that member questions at full Council meetings were considered immediately following motions. The amendment was agreed at the full Council meeting of 25 June 2014, and was now subject to review following three full Council meetings.

81.2 A member expressed the view that member questions were a useful mechanism in scrutinising the work of the Cabinet and it was therefore not appropriate for member questions to be considered later on in the agenda. He felt that member questions should be considered at the beginning of the meeting when there were usually more members in attendance. Another member agreed, explaining that in his view the correct order of business was for member questions to be considered straight after the public questions, as the questions could be pertinent to the motions considered later on in the meeting.

81.3 Cllr Lesley Williams confirmed that the consensus view of the Labour Group was that the order of business at full Council meetings should be restored, so that member questions were considered at the beginning of the meeting, straight after public questions.

- 81.4 Cllr Colin Guyton (mover of the original motion) explained that the intention of the original motion was to lessen the amount of time taken to deal with member questions, by encouraging members to submit their question to the relevant Cabinet member first, outside of the meetings. The question would then only be answered at full Council or Cabinet if a satisfactory response had not been received within 10 working days.
- 81.5 A number of members expressed support for the current order of business at full Council meetings to continue. Emphasis was placed on motions being the most important part of Council meetings. It was recognised that some members had other commitments later on in the day; by having member questions at the end of the agenda they could leave the meeting still having had the opportunity to debate the motions.
- 81.6 ***RESOLVED TO RECOMMEND TO THE COUNCIL*** that the current order of business at full Council meetings should continue, so that member questions were considered immediately following motions.

82. ITEMS REQUESTED BY CLLR JEREMY HILTON

82.1 Overview and scrutiny

- 82.1.2 The Committee noted that following the debate at full Council on 26th November 2014, Cllr Hilton had requested that further consideration be given to the establishment of an overview and scrutiny committee to look at the Fire and Rescue Service, Emergency Planning and Business Continuity.
- 82.1.3 Cllr Hilton informed the Committee that in his view, items related to the Fire and Rescue Service, Emergency Planning and Business Continuity, were not being given sufficient coverage by the Environment and Communities Scrutiny Committee agenda. Another member agreed, commenting that those aspects of the agenda did not fit well under the remit of the Environment and Communities Scrutiny Committee as the agenda focused predominantly on highways and waste issues.
- 82.1.4 Cllr Hilton explained that he believed that if the scrutiny of those services remained within the remit of the Environment and Communities Scrutiny Committee, then a mechanism was needed, to ensure those services, received the appropriate level of scrutiny.
- 82.1.5 The Committee was informed that an officer had undertaken research into the arrangements for scrutiny of the fire and rescue services in other county councils. Of the 12 councils contacted, none had a separate scrutiny committee specifically for the fire and rescue service.

- 82.1.6 A member expressed the view that whilst he was supportive of the Fire and Rescue Service being effectively scrutinised, he did not believe a separate committee for the Fire and Rescue Service was necessary. He pointed out that Cabinet Members could be held to account on the decisions they took through the Shadow system, and the Chief Fire Officer was often in attendance at the Environment and Communities Scrutiny Committee meetings.
- 82.1.7 A number of members were of the opinion that the most effective way of ensuring matters relating to the Fire and Rescue Service, Emergency Planning and Business Continuity, received the appropriate level of scrutiny, would be for a standing item; i.e. 'Report from the Chief Fire Officer', to be included on future Environment and Communities Scrutiny Committee agendas.
- 82.1.8 **RESOLVED TO RECOMMEND TO THE ENVIRONMENT AND COMMUNITIES SCRUTINY COMMITTEE** that consideration be given to including a standing item on all future Environment and Communities Scrutiny Committee agendas; i.e. 'Report from the Chief Fire Officer', to enable any relevant issues regarding the Fire and Rescue Service, Emergency Planning and Business Continuity to be considered by the Committee.

82.2 Tied Votes

- 82.2.1 Cllr Hilton explained to the Committee that he believed an appropriate amendment should be made to the Constitution to ensure that the position was made clear in the case of a tied vote.
- 82.2.2 Members of the Committee recognised that a tied vote for the election of Chairman, or a tied vote in the case of a procedural motion relating to the election of Chairman, would happen only very rarely. Members of the Committee were however in support of an explanatory note being added to the Constitution, to specify that if the situation were to arise, then the matter would be dealt with by the toss of a coin.
- 82.2.3 **RESOLVED THAT THE MONITORING OFFICER** be requested to make the appropriate change to the Constitution under her delegated powers.

83. REVISIONS TO THE EMPLOYEE CODE OF CONDUCT

- 83.1 Jane Burns, Director of Strategy & Challenge and Monitoring Officer, informed the Committee that following a recommendation from the Internal Audit Review of the Employee Code of Conduct, the document had been updated to reflect recent legal and other changes. The amendments were shown as tracked changes.
- 83.2 The Committee considered the revised Employee Code of Conduct. In response to a point raised by a member, the Monitoring Officer explained that whilst the Political Assistant posts were politically sensitive, they were bound by slightly

Minutes subject to their acceptance as a correct record at the next meeting

different regulations. The specific regulations relevant to the posts were outlined in the three post holders' contract of employment.

83.3 ***RESOLVED TO RECOMMEND TO THE COUNCIL*** that the revised *Employee Code of Conduct* is approved and adopted.

84. GLOUCESTERSHIRE ECONOMIC GROWTH JOINT COMMITTEE

84.1 The Committee noted the changes.

RESOLVED TO RECOMMEND THE COUNCIL to ratify the changes to the *Constitution, made by the by the Monitoring Officer under delegated powers, regarding the Gloucestershire Economic Growth Joint Committee.*

85. COMMONS AND RIGHTS OF WAY COMMITTEE

85.1 The Committee noted the changes.

RESOLVED TO RECOMMEND THE COUNCIL to ratify the changes to the *Constitution, made by the by the Monitoring Officer under delegated powers, regarding the Commons and Rights of Way Committee.*

CHAIRPERSON

Meeting concluded at 3.50 pm

REPORT OF THE INDEPENDENT REMUNERATION PANEL

DECEMBER 2014

1. Introduction

1.1 This report has been produced by an Independent Remuneration Panel (IRP) made up of members drawn from the local community. The Panel is independent of the Council and its role is to make recommendations on the level of allowances paid to councillors. The object being to promote access to all in our diverse community who may wish to stand for election to serve that community via the democratic process.

1.2 The members of the Panel:

- Richard Blamey Former Pensions Manager with a large multi-national industrial gas company. Currently a Pensions Consultant and trustee, also serves as treasurer and member of his local parish council.
- Philip Lowery A former adviser to the Social Services Committee. Member of the Independent Advisory Group (IAG) of the Criminal Justice Board.
- Fiona Miles Former Clinical Nurse Specialist in Respiratory Medicine. Former Treasurer and Secretary to play groups and the Royal College of Nursing Specialist Group. Trustee of Gloucestershire Chest Fund. Also a parish councillor, school governor and involved in Gloucestershire Girl Guiding and the RSPB.
- Gwyn Morgan Former Head of Science at a Gloucestershire Secondary School. Broad experience of the education system as a teacher and a school governor. Custody Visitor with high level security clearance.
- Quentin Tallon Former Secretary of Cheltenham and District TUC with broad experience of trade union and other negotiations. Involvement with the voluntary sector.

1.3 The members of the Panel would like to place on record their thanks to William Alexander who stood down from the Panel after more than 10 years' service. William was Chairman of the Panel for most of that time and he has played a significant role in the development of the current allowances scheme.

1.4 The Panel's recommendations relate to the period 1 April 2015 to 31 March 2016 and are in keeping with the following statutory provisions:

1.4.1 Local Government and Housing Act 1989 and Local Government Act 2006

1.4.2 The Local Authorities (Members' Allowances) (England) Regulations 2003 ('The Allowances Regulations')

2. Review process

2.1 The Panel met on 24 April, 16 October and 4 December 2014. Interviews with 22 councillors were conducted on 6, 8 and 10 October 2014. Members were asked about their roles both at the Council and within their communities. They were also invited to give their views on the current allowances scheme. Considerable help was given to the Panel by the willingness of members to be open and frank with their responses to questioning.

2.2 The Panel recognises the value of the commitment of all County Councillors to the people of Gloucestershire and congratulate them on their untiring efforts in this cause.

2.3 The Panel recognises the support given to councillors by the Democratic Services Team and the value of an ongoing member development programme to help members understand their roles and responsibilities.

3. Allowances

3.1 In their January 2014 report, the Panel members made clear that the appropriate rate for the Basic Allowance should at least be £10,000. One year on, this remains our view and we maintain that the current Basic Allowance of £9,000 undervalues the role of our County Councillors. The Panel recognise, however, that the severe financial constraints being faced by local authorities means that achieving the target of £10,000 will be difficult in the short-term.

- 3.2 After much consideration, Panel members are recommending an increase in the Basic Allowance from £9,000 to £9,150 for 2015-16. This is a majority view, with one Panel member feeling strongly that the allowance should be set at a higher figure in order to ensure progress is made towards reaching the £10,000 goal. The Panel as a whole has sympathy with this view but felt it necessary to curtail these aspirations again this year in light of the ongoing austerity measures.
- 3.3 The Panel believe that the principle of using the Basic Allowance as a 'building block' for the Special Responsibility Allowances should not be lost. The only exceptions are the Political Group Leaders and the Political Group Spokespersons or 'Shadows' where fixed figures are recommended based on the 2014-15 allowances. The level of these allowances will be reviewed annually by the Panel.
- 3.4 The Panel will continue to consider all matters impinging on allowances during 2015-16 being mindful that the level of Basic Allowance remains low. It is important in the longer term that allowances are set at a level so as not to discourage people from standing for election.

4. Recommendations

4.1 Basic Allowance

To increase the Basic Allowance from £9,000 to £9,150 from 1 April 2015.

4.2 Special Responsibility Allowances

To adopt the Special Responsibility Allowances shown at Appendix A.

Richard Blamey

Chairman

Independent Remuneration Panel for Gloucestershire County Council

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Appendix A

Basic allowance payable to all members

£9,150

			BA multiple	Allowance
Special responsibility allowances				
Leader of the Council			3.00	£27,450
Group leader (5+ members, not Leader of Council)	Lib Dem	14		£5,850
	Labour	9		£5,850
Group Leader (4 members or less)	Independent	2		£2,340
	UKIP	3		£3,510
Cabinet member			2.00	£18,300
Scrutiny chair			0.60	£5,490
Audit and Governance Committee chair			0.60	£5,490
Planning Committee chair			0.60	£5,490
Pensions Committee chair			0.60	£5,490
Chair of Council			1.00	£9,150
Vice-chair of Council			0.30	£2,745
Adoption Panel member			0.60	£5,490
Fostering Panel member			0.60	£5,490
Political Group Spokesperson/Shadow				£1,500

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Terms of Reference for the Local Pension Board of the Gloucestershire LGPS Pension Fund

Report of the Strategic Finance Director

Introduction

The Public Service Pensions (PSP) Act 2013 requires each Local Government Pension Scheme (LGPS) to set up a Local Pension Board. The Department of Communities and Local Government (DCLG) have been consulting on the regulations relating to this and their most recent consultation ended on 21st November 2014. Final regulations are expected in early 2015 and LGPS Funds are expected to have agreed terms of reference in place by 1st April 2015.

A first draft of these terms of reference was considered by the Pension Committee on 28th November 2014 and comments from that meeting along with advice from the Head of Legal have been included in the attached final terms of reference.

Report

Final regulations on Pension Boards are still awaited from DCLG. If they are issued by the date of the meeting, the Committee will be given details of their content and the need for any changes to the terms of reference, on the day.

Otherwise, all members of the Committee will be advised of any further changes required, once the final regulations are issued.

The terms of reference clearly outline the role and remit of the board and it's membership. This paper outlines the process by which board appointments will be made;

The selection process for recruiting members of the board will include a reasonable period of advertising the positions. A closing date for the receipt of applications will be given at least two weeks from the date the advert is first placed. Information will be prepared and sent to those requesting application forms. Applicants will be considered against the skills and knowledge requirements outlined in the terms of reference and also in annex A. The panel will meet and consider applications and interview candidates. In the event of excessive numbers of eligible board members, appointments of candidates will aim to reflect the balance of employers within the Gloucestershire LGPS.

Members of the Gloucestershire Pension Fund (active, deferred and pensioner members) have been contacted via their annual benefit statements or a message in the pensioner payslips, advising them that a Pension Board will be set up in 2015.

Shortly after the terms of reference for the Board have been agreed by the County Council (scheduled for 18th February 2015) an application form will be available on the Pension Fund's website.

Employers with members in the Pension Fund will also be contacted and advised of this process.

Anyone wishing to be considered as a member of the Pension Board can then complete an application form detailing their relevant knowledge and experience and their ability to represent other members or employers.

It is anticipated that members of the Pension Board will be appointed by the end of May 2015, with the first meeting of the Pension Board taking place in July 2015.

It is very important that awareness of the board continues to be raised. To this end annex B outlines what will be available on the website.

The draft terms of reference of the Pension Board will be considered by the Constitution Committee on 4th February and then by County Council on 18th February.

Recommendation

The Committee are asked to agree the attached draft terms of reference.

Contact Officer

Graham Burrow (01452 328944)

Annex A

Knowledge and Skills

It is for individual Pension Board members to be satisfied that they have the appropriate degree of knowledge and understanding to enable them to properly exercise their functions as a member of the Pension Board.

In line with this requirement Pension Board members are required to be able to demonstrate their knowledge and understanding and to refresh and keep their knowledge up to date. Pension Board members are therefore required to maintain a written record of relevant training and development.

Pension Board members will undertake a personal training needs analysis and regularly review their skills, competencies and knowledge to identify gaps or weaknesses.

Pension Board members will comply with the Scheme Manager's training policy.

Annex B

Board Meetings and Publication of Board Information

Scheme members and other interested parties will want to know that the Gloucestershire Local Government Pension Fund is being efficiently and effectively managed. They will also want to be confident that the Pension Board is properly constituted, trained and competent in order to comply with scheme regulations, the governance and administration of the scheme and requirements of the Pension Regulator.

Up-to-date information will be posted on the Gloucestershire Local Government Pension Fund website showing

- The names, contact details and representation of the Pension Board members.
- The responsibilities of the Pension Board as a whole
- The full terms of reference and policies of the Pension Board and how they operate
- The Pension Board appointment process
- Who each individual Pension Board member represents
- Any specific roles and responsibilities of individual Pension Board members.

The Scheme Manager will also consider requests for additional information to be published or made available to individual scheme members to encourage scheme member engagement and promote a culture of openness and transparency

Terms of Reference for the Pension Board of the Gloucestershire Local Government Pension Fund

1. Role of the Pension Board

- 1.1 The role of the local Pension Board as defined by sections 5 (1) and (2) of the Public Service Pensions Act 2013, is to –
- Assist Gloucestershire County Council as Scheme Manager; –
 - to secure compliance with the Local Government Pension Scheme (LGPS) Regulations and any other legislation relating to the governance and administration of the LGPS
 - to secure compliance with requirements imposed in relation to the LGPS by the Pensions Regulator
 - in such other matters as the LGPS regulations may specify
 - Provide the Scheme Manager with such information as it requires to ensure that any member of the Pension Board or person to be appointed to the Pension Board does not have a conflict of interest.
- 1.2 In addition the LGPS (Amendment) (Governance) Regulations 2015 expect the Pension Board to assist the Scheme Manager to secure the effective and efficient governance and administration of the LGPS for the Gloucestershire Local Government Pension Fund
- 1.3 The Board shall provide an annual report to the Pension Committee and then to a full meeting of Gloucestershire County Council. The report will include information on the business conducted by the Pension Board with any risks or concerns identified and mitigation steps proposed. The report will also be published on the Pension Fund's website. Any concerns requiring reporting outside the annual process should be raised with the Pensions Committee.
- 1.4 The Pension Board will ensure it effectively and efficiently complies with the code of practice on the governance and administration of public service pension schemes issued by the Pension Regulator.
- 1.5 The Pension Board will also help ensure that the Gloucestershire Local Government Pension Fund is managed and administered effectively and efficiently and complies with the code of practice on the governance and administration of public service pension schemes issued by the Pension Regulator.

2. Appointment of members of the Pension Board

2.1 The Pension Board shall consist of 5 members and be constituted as follows:

a) The Chairman

The Chair of the Pension Board will be a County Councillor who is neither a member of Cabinet nor of the Pension Committee. The Chairman will be appointed annually at a meeting of Full Council.

b) Two employer representatives who can demonstrate their relevant experience, their capacity to represent other scheme employers, and their knowledge and understanding of the Local Government Pension Scheme. To be appointed by the Scheme Manager following a selection process.

c) Two scheme member representatives who can demonstrate their relevant experience, their capacity to represent other scheme members, and their knowledge and understanding of the Local Government Pension Scheme. To be appointed by the Scheme Manager following a selection process.

3. Length of term and removal:

3.1 Each employer representative and scheme member representative so appointed shall serve initially for a 4 year term, which may be extended for further 4 year terms subject to re-nomination and re-selection.

3.2 Board members can be removed on grounds of non attendance, breach of code of conduct and non participation in training.

3.3 Each Board member should endeavour to attend all Board meetings during the year and is required to attend at least **one** of the scheduled meetings each financial year. In the event of a Board member failing to do this, or other persistent non-attendance then the tenure of that member should be reviewed by the other Board members in liaison with the Scheme Manager.

3.4 Other than by ceasing to be eligible, a Board member may only be removed from office during a term of appointment by the unanimous agreement of all of the other members in attendance at the Board Meeting where this is being considered. The removal of the Chairman also requires the consent of the Scheme Manager

4. Quorum

The Board shall have a formal quorum of **3** to include the Chair, one employer representative and one member representative.

Because of the specialist nature of their work, no substitution is permitted.

5. Code of Conduct and Conflicts of Interest

The principles included in the County Council's Member Code of Conduct applies to all members of the Local Pension Board. Likewise, all other relevant County Council policies shall apply to members of the Pension Board.

As a condition of appointment, Board members shall be required to enter into a confidentiality agreement with the County Council.

6. Knowledge and Skills

A member of the Pension Board will be conversant with –

- The legislation and associated guidance of the Local Government Pension Scheme (LGPS).
- Any document recording policy about the administration of the LGPS which is for the time being adopted by the Gloucestershire Local Government Pension Fund.

A member of the Pension Board must have knowledge and understanding of –

- The law relating to pensions, and
- Any other matters which are prescribed in regulations.

7. Board Meetings and Publication of Board Information

7.1 The Board shall meet no less than twice per annum. If there is a need for an additional meeting this will be determined by the Scheme Manager in discussion with the Chair of the Board.

7.2 The agenda and supporting papers shall be distributed to members of the board 5 clear working days prior to each meeting

7.3 Pension Board papers, agendas and minutes of meetings will be published on the Gloucestershire Local Government Pension Fund website subject to the Rules on Access to Information and the Data Protection Act 1998.

8. Remit of the Board

The Board shall:

- i. Ensure the Pension Fund's strategy and policy documents are in place and have been maintained in accordance with the LGPS Regulations. These documents are the: communications policy statement; funding strategy statement; governance compliance statement; pensions administration strategy; Pension Fund annual report and accounts; statement of investment principles.

- ii. Ensure the Pension Fund's internal Risk Register is in place and reviewed at least annually.
- iii. Review the Pension Fund's performance in complying with the requirements of the LGPS Regulations and any other legislation relating to the governance and administration of the LGPS.
- iv. Review the Pension Fund's performance in complying with the requirements of the Pension Regulator.
- v. Provide advice and make recommendations when required, to the Pensions Committee, on areas that may improve the governance of the Pension Fund.
- vi. Each January, submit a proposed work plan for the forthcoming financial year, to the Pensions Committee.
- vii. To carry out any other activities relating to the efficient governance and administration of the Pension Fund, which the Pensions Committee may request the Pension Board to undertake.

9. Voting Rights and Decision making

- 9.1 Each member of the Pension Board will have an individual voting right but it is expected the Pension Board will as far as possible reach a consensus.
- 9.2 A majority of Board members, present at a meeting, will be required to agree any decision of the Board, including any referrals back to the Pensions Committee.
- 9.3 When applicable, the Chair of the Pension Board will have a second or casting vote.

10. Accountability

The Pension Board will be collectively and individually accountable to the Scheme Manager.

Definitions

The undernoted terms shall have the following meaning when used in this document:

“Pension Board” or “Board”	Means the local Pension Board for Gloucestershire County Council as administering authority for the Gloucestershire Local Government (LGPS) Pension Fund as required under the Public Service Pensions Act 2013
“Scheme Manager”	Means Gloucestershire County Council as administering authority of the Gloucestershire Local Government (LGPS) Pension Fund
“LGPS”	The Local Government Pension Scheme as constituted by the Local Government Pension Scheme Regulations 2013, the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 and The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009
“Scheme”	Means the Local Government Pension Scheme as defined under “LGP

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Consequential Constitution Changes relating to the Pension Committee

11. To consider advice and recommendations from the Pension Board on areas that may improve the governance of the Pension Fund (the remit of the Pension Board is detailed in its Terms of Reference).

12. To consider the Pension Board's proposed work plan for the forthcoming financial year.

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AMENDMENTS TO THE COUNCIL'S CONSTITUTION

CONTRACT STANDING ORDERS

Report of the Head of Commercial Services

1. Purpose of the Report

- 1.1 Seeking authorisation for the new Contract Standing Orders (CSOs.) The new Contract Standing Orders reflect the updated commercial roles and practice within the Council.

2. Background

- 2.1 The Council's CSOs are those rules of procedure which the Council wishes to be mandatory which are supplemented by guidance for staff. For the sake of brevity, the CSOs do not set out that which is already law. The current CSOs have been in place for a number of years and no longer reflect best practise nor do they provide an efficient framework for officers to work within. In order to ensure that the Council continues to be commercially effective the new CSOs have been updated to reflect:

- Simpler more accessible language and structure
- The formation of the Commercial Services function within the Council and strengthened commercial procedures and management
- The updated legal framework, both EU law and national law
- Changes in financial thresholds to reflect EU law and the new internal thresholds as managed by the Commercial Services team
- The move to e-procurement technology, i.e. the use of an e-tendering system

3. Key Changes

3.1 Language

The language in the CSOs has been modernised and simplified to ensure that they are accessible and comprehensible to any Council Officer required to procure goods, services or works.

3.2 Commercial Services

Commercial Services was set up in April 2014 to strengthen the Council's commercial and procurement capability. Over 70% of the Council's budget is now spent externally and with further budget pressure we need to ensure that value for money is achieved from every Council pound spent. The Commercial Services team has been set up to:

- Act as a centre of expertise for high value/high risk procurement activity and contract management and, to work collaboratively with other business areas to:
 - Support the commissioning cycle and decision making with better information, analysis and market intelligence
 - Deliver cashable savings from both procurement and contract management activity increasing the contribution to MTC2 and securing better outcomes e.g. social value
 - Increase commercial skills, behaviours and awareness across the organisation.

The CSOs have been updated to reflect the above and are supported by enhanced guidance on the Commercial Service webpages.

3.3 Value Thresholds

The value thresholds have been removed from the CSOs and now refer to the OJEU limits (not the figures themselves) as these change regularly, the current thresholds are £172,514 for goods and services and £4,322,012 for works. The lower thresholds have been updated to reflect the best practise for lower value contracts. Most notably, the 3 quotation threshold has been moved from £15,000 to £75,000 which is considered the appropriate threshold by many local authorities. All the high value/high risk procurements are being managed centrally by the tendering team within Commercial Services and there is strengthened process, governance and guidance for the lower value procurements.

3.4 Electronic Tendering

When the new EU legislation is passed into UK law, electronic tendering will be mandatory. The Council already tendered electronically but this is now enforced through the CSOs which also allows for greater visibility of all contracting within the Council.

4. Recommendation

- 4.1 That the Committee approves the new CSOs and that they are recommended to full Council for adoption.

5. **Appendix 1 – Updated CSOs**

Graham Collins
Commercial Manager
January 2015

APPENDIX 1

Contract Standing Orders

Table of Contents

Application	2
1. Background	2
2. Scope	2
3. Accountability & Responsibility.....	3
4. Basic Principles	3
5. Exemptions.....	4
6. Requirements to consult Head of Legal Services and Head of Procurement	4
7. Grants	5
8. Collaborative Procurement, Frameworks and Use of Agents	5
The Contracting Process	5
9. Competition Requirements	5
10. General	7
11. Select Lists	7
12. The Quotation Process	7
13. Requirements Applicable to all Tendering Exercises	8
14. Tendering Exercises	9
15. Conditions of Contract & Contract Formalities	10
Other Requirements	11
16. Prevention of Corruption & Declaration of Interests	11
17. Procurement Guidance	11

Application

1. Background

- 1.1 The purpose of these Contract Standing Orders is to ensure that all Council contracts are demonstrably made:
- a) in compliance with the law and best practice;
 - b) maximising fairness, transparency and competition;
 - c) to improve quality and value for money;
 - d) to enable the Council to develop and deliver its Commercial Strategy; and
 - e) in compliance with the Council's Financial Regulations.

2. Scope

- 2.1 These Contract Standing Orders apply to all relevant contracts made (including all orders placed) by, for or on behalf of the Council, including when the Council is acting on behalf of other public bodies. Relevant contracts include arrangements for:
- a) the supply or disposal of goods
 - b) the hire, rental or lease of goods or equipment
 - c) the provision of works and the supply of works materials
 - d) the provision of services, including consultancy services
 - e) the granting of works concessions or services concessions
 - f) the selection of sub-contractors by the Council, where these are nominated under a main/prime contract
- 2.2 Relevant contracts include contracts between the Council and any other contracting party, including:
- a) Other public bodies, including other local authorities
 - b) Voluntary and community sector organisations acting as suppliers to the Council.
 - c) Private sector suppliers to the Council.
- 2.3 Relevant contracts do not include:
- a) agreements regarding the acquisition, disposal, or transfer of land, pre-existing property leases, and licenses; or
 - b) the award of grants by the Council
- The rules governing these are covered by separate procedural guidelines approved (from time to time) by the Cabinet, Leader of the Council or a Cabinet Member.
- 2.4 Subject to the Fair Funding Scheme for Financing Schools of the Council for the time being under Section 48 of the School Standards and Framework Act 1998 these Standing Orders apply to Gloucestershire Education Authority schools.

3. Accountability & Responsibility

- 3.1 These Contract Standing Orders apply to all Officers of the Council. Officers must ensure that any agents, consultants and contractual partners acting as procurement agents on behalf of the Council also comply with these Contract Standing Orders.
- 3.2 It is a disciplinary offence for officers not to comply with these Contract Standing Orders.
- 3.3 Directors must ensure that their staff comply with these Contract Standing Orders.
- 3.4 An Authorised Officer must not seek or accept technical advice on the preparation of a request for quotation or an Invitation to tender from any party which may have a commercial interest in the procurement if this may prejudice the equal treatment of all potential suppliers or distort competition.
- 3.5 Authorised Officers may award contracts and place orders and requisitions that comply with these Contract Standing Orders provided that:
- a) the financial values and commitments are within approved budget estimates and within their delegated responsibility;
 - c) they are within the Council's legal powers;
 - e) where the contract involves the transfer of Council staff, or former Council staff who have previously been the subject of an outsourcing of service, the authorised officer is acting in accordance the Direction made by the Secretary of State under section 102 of the Local Government Act 2003 (pension provision) or any replacement.
- 3.6 Directors must ensure that schemes of authorisation exist identifying which officers have responsibility and the level of their financial delegation for:
- a) authorising orders and the payment of invoices
 - b) agreeing tender and quotation processes
 - c) approving tender and contract documents
 - d) holding and opening returned tenders (CSO 13.4)
 - e) awarding contracts
 - f) managing contracts in line with the council's Contract Management Framework, including performance monitoring and the agreement of specification and price variations
 - h) arrangements for the management of the contract
- 3.7 Directors must ensure that officers undertaking procurement and commissioning have skills, competencies, and knowledge appropriate to the scope, risk and complexity of their activity.

4 Basic Principles

- 4.1 All purchasing and disposal activities must:

- a) achieve best value for public money spent
- b) support the Council's corporate aims and policies
- c) be consistent with the highest standards of integrity
- d) ensure fairness and transparency in allocating public contracts
- e) comply with all legal requirements
- f) produce and maintain adequate records and a clear audit trail
- g) be consistent with any procedures or guidance set out in accounting instructions and any procedures or guidance issued by the Head of Commercial Services.

5. Exemptions

- 5.1 These Contract Standing Orders do not apply where they are superseded by the Fair Funding Scheme for Financing Schools
- 5.2 Any requirement under these Contract Standing Orders to seek more than one tender or quotation does not apply where arrangements are being made for the appointment of counsel or other experts by the Head of Legal Services, who must be satisfied that the fee to be paid is relative to the level of advice and expertise required.
- 5.3 Any requirement for competition shall not apply to the letting of a bespoke care, education, accommodation or assessment package for a specified individual or the placement of an individual to a provider accredited by the Council at the Council's contracted rates.
- 5.4 Subject to CSO 13.4(b) any exception to these Contract Standing Orders may only be made by the express direction of the Cabinet, Leader of the Council, a Cabinet Member or the Chief Executive.

6 Requirements to consult Head of Legal Services and Head of Commercial Services

In addition to those instances outlined in CSO 6, this Contract Standing Order identifies other occasions where these Contract Standing Orders create a mandatory obligation to consult with the Head of Legal Services and/or the Head of Commercial Services.

- 6.1 All quotations, expressions of interest and tenders must be received by the date and time given in the original advertisement. An Authorised Officer may consider exceptions to this Standing Order in situations where the late submission is genuinely outside the control of the supplier concerned, but only with the agreement of the Head of Legal Services (CSO 13.4).
- 6.2 Officers must obtain the agreement of the Head of Commercial Services before using any third party to conduct any procurement exercise on the Council's behalf.

- 6.3 Authorised Officers shall consult with the Head of Legal Services immediately they become aware that any significant dispute or claim may arise in relation to a contract or procurement exercise or during the life of a contract.
- 6.4 Minor contract variations that have regard to small administrative changes can be undertaken by the Authorised Officer such as contact name changes, address changes, small service or specification changes. All major contract variations (i.e. anything beyond a minor change) that have regard to changes in price, term or terms and conditions must be referred to the Head of Commercial Services

7. Grants & External Funding

- 7.1 Authorised Officers shall have regard to guidance on grant making which may be issued from time to time by the Director of Strategic Finance.
- 7.2 Where the Council is using grant monies itself or passing it on to a third party, the application of that money shall be subject to the requirements of the relevant grant funding body.
- 7.3 In considering the award of a grant, Directors shall have regard to the law on state aid and best value law.
- 7.4 Before entering into any arrangement where the Council takes on accountable body status, appropriate advice must be sought from the Head of Finance, Head of Commercial Services and the Head of Legal Services.

8. Collaborative Procurement, Frameworks and Use of Agents

- 8.1 Without prejudice to CSO 8.2, where a collaborative contract or framework has been let by another public authority or central buying organisation through competition, and in accordance with its own contract standing orders and legal requirements, this contract shall be deemed to comply with the Council's Contract Standing Orders.
- 8.2 Before using any collaborative contract, an officer must first verify that:
- a) the contract was procured in accordance with all relevant UK and EU law; and
 - b) the contract was advertised appropriately, and specifically that the scope of the advert allowed the contract's use by the Council; and
 - c) the contract has been let on appropriate conditions of contract; and
 - d) the contract offers, or is reasonably likely to offer, better overall value for money, or benefit to the Council, than the Council could achieve through independent procurement

The Contracting Process

9. Competition Requirements

Goods and/or Services and Works

- 9.1 All contracts for goods and/or services and all contracts for works that have a total value or estimated total value equal to or in excess of the relevant EU threshold shall be tendered in accordance with European procurement law and the provisions of the Public Contract Regulations 2006 or such other replacement or amending legislation as may from time to time apply.
- 9.2 All contracts for goods and/or services and all contracts for works that have a total value or estimated total value of less than the relevant EU threshold shall be tendered in accordance with the provisions of these Contract Standing Orders.
- 9.3 Contracts for goods and or services that have a total value or estimated total value:
- a) up to £15,000 may be procured after obtaining a single written quotation which must be obtained against a written request for a quotation.
 - b) between £15,001 and £75,000 may be procured after obtaining three written quotations which must be obtained using the Council's e-procurement system.
 - c) between £75,001 and up to EU threshold may be procured after having undertaken a tendering process using the Council's e-procurement system.
 - d) over EU threshold must be procured after having undertaken a tendering process using the Council's e-procurement system.
- 9.4 Contracts for works that have a total value or estimated total value of:
- e) up to £250,000 may be procured after obtaining three written quotations which must be obtained using the council's e-procurement system.
 - f) between £250,001 and up to the relevant EU threshold may be procured after having undertaken a tendering process using the council's e-procurement system.
 - g) over EU threshold must be procured after having undertaken a tendering process using the Council's e-procurement system.
- 9.5 Contract extensions may only be considered if there is a legal right to extend the contract and must follow the Council's governance process for approval.
- 9.6 A Direct Award (DA) should only be considered as a last resort when all other procurement strategies have been excluded and only in accordance with EU legislation under the following circumstances:
- a) where it is determined through market analysis/engagement that the services are only capable of being provided by one particular provider; or
 - b) where there is an urgent need; or
 - c) in limited cases, to protect intellectual property rights that the provider holds

For all direct awards over £75,001 the process detailed in the guidance from the Head of Commercial Services must be followed.

10. General

Authorised Officers must, when looking to award any relevant contract, fully comply at all times with any procurement guidance issued by the Head of Commercial Services under CSO 17.

11. Select Lists

- 11.1 A Select List is a list of pre-qualified suppliers used for running quotations or non – EU tenders.
- 11.2 The use of a select list may be appropriate where:
- a) quotations or tenders are regularly obtained for the same or similar types of goods, services, and works; and
 - b) it is not practical or appropriate that the goods, services and works in question be aggregated into a single requirement and/or competed under one procurement; and
 - a) the total value of the goods, services and work, if aggregated, would not exceed any relevant EU threshold.
- 11.3 A select list shall only be used where an agreed procurement strategy is in place that has identified that a select list is the most appropriate option having considered all others.
- 11.4 Authorised Officers shall seek the prior agreement of the Head of Commercial Services before establishing a select list. The authorised officer shall ensure that the level of expenditure through the select list is monitored so as not to risk breaching the EU rules on aggregation.
- 11.5 A select list may be either a Rolling select list or a set select list:
- a) with a rolling select list a supplier may apply to the Council at any time for inclusion on the select list.
 - b) with a set select list a supplier may apply to the Council only within specific time-periods, in response to specific advertisements placed by the Council.

12. The Quotation Process

- 12.1 The quotation process applies when the estimated total value of a contract is £75,000 or less for goods and services and £250,000 or less for works.
- 12.2 All requests for quotation should be carried out on the Council's e-procurement system in accordance with guidance from the Head of Commercial Services.
- 12.3 Where a single supplier is to be selected, an authorised officer may choose either to:

- a) place an order with the selected supplier, on the basis of a pre-quoted price (such as in a supplier's catalogue) having satisfied themselves that the price to be paid represents good value for money; or
- b) issue a request for quotation to the selected single supplier

13. Requirements applicable to all tendering exercises

13.1 All tendering exercises must be conducted electronically through the Council's e-procurement system unless the use of an alternative process has been previously approved in writing by the Head of Commercial Services.

13.2 Receiving Expressions of Interest

All expressions of interest must be received by the date and time given in the original advertisement. An authorised officer may consider exceptions to this Contract Standing Order in situations where the late submission is genuinely outside the control of the supplier concerned, but only with the agreement of the Head of Legal Services.

13.3 Issuing Invitations to Tender

- a) Where a tendering process involves a process of qualification and selection before the award phase, an authorised officer shall only issue an invitation to tender to those suppliers that have met the required selection criteria, including any minimum standards set. Suppliers may be shortlisted to be invited to tender on the basis of marks awarded against the selection criteria
- b) An authorised officer shall ensure that an invitation to tender is based on a robust procurement strategy based on model instructions for tendering approved by the Head of Commercial Services
- c) Suppliers shall be allowed sufficient time to complete their tenders, taking into account the complexity of the requirement and the contract, and the time required for them to prepare their response. A minimum of ten working days must be allowed from the date on which the invitation was sent.
- d) All suppliers being invited to tender must be issued with the same information at the same time and subject to the same conditions. Any clarification, supplementary information, or changes to the content or detail of the invitation, must be given on the same basis.
- e) All communications with the suppliers should be through the Council's e-procurement system.

13.4 Receiving Tenders

- a) Where in accordance with CSO 13.1 tenders are to be submitted electronically, authorised officers shall ensure that they are kept secure and un-opened via the Council's e-procurement system until the specified date and time, after which they shall be opened by an officer who has been authorised to do so by the Head of Legal Services. The precise process to be adopted shall be agreed with the Head of Commercial Services and the Head of Legal Services.
- b) If suppliers have not followed the instructions issued within the invitation to tender (with regard to how tenders should be delivered, packaged,

marked, referenced etc.) such tenders must normally be excluded from further participation in the tender process. However, in exceptional circumstances, the Head of Legal Services may permit tenders to be considered in the case of a minor breach by the tenderer, providing the principle of equal treatment of tenderers and the integrity and confidentiality of the tendering process would not be breached.

- c) In exceptional circumstances, any tenders that are received after the specified date and time, but before the tenders have actually been opened, may be included - but only where the late submission is genuinely outside the control of the supplier concerned, and only with the agreement of the Head of Legal Services, who shall in considering whether to waive the deadline have regard to the need to avoid unequal treatment, discrimination or lack of transparency. Such decision shall be made by the Head of Legal Services personally or by the Deputy Head of Legal Services but shall not be given by any other person.
- d) Any tender that is received after the tenders have been opened, or which otherwise does not comply with the instructions in the invitation to tender, shall be rejected and shall be returned to the tendering supplier with an explanation for this rejection.

14. Tendering Exercises

14.1 Contracts for service concessions and contracts for goods, services and works of total value below the relevant EU thresholds, shall be tendered if they equal or exceed the financial values set out in CSO 9.3 or 9.4

14.2 All tender opportunities must be advertised via the Council's e-procurement system in line with the appropriate levels in CSOs 9.3 and 9.4

14.3 Award

- a) Any Contract(s) shall be awarded to the supplier(s) whose tender(s) best meet(s) the previously published award criteria.
- b) Award may be made on the basis of only:
 - i) the 'most economically advantageous tender' (which is equivalent to the best value for money); or
 - ii) the lowest price
- c) If awarding on the basis of the 'most economically advantageous tender' (the best value for money), an Authorised Officer shall use criteria linked to the subject matter of the contract.
- d) If, having completed tender evaluation, the Director or otherwise Authorised Officer believes that one (or more) tender(s) offers good value for money to the Council, they may award a contract to this supplier (or suppliers).
- e) When awarding any contract for goods, services or works which in aggregate value exceeds the EU threshold; an Authorised Officer shall apply a minimum ten (10) day Standstill Period and provide, with the Standstill notice, sent to all tenderers and candidates, full reasons for the decision, including the characteristics and relative advantages of the successful tenderer.

15. Conditions of Contract & Contract Formalities

- 15.1 All contracts must be formally concluded in writing before the supply, service or work begins.
- 15.2 Contracts shall be written in plain language and shall adopt either:
- a) conditions of contract produced by professional bodies and agreed by the Head of Legal Services; or
 - b) conditions of contract developed by or agreed by the Head of Legal Services for specific types of procurement or specific procurement projects; or
 - c) conditions of contract within collaborative contracts let by other public contracting authorities; or
 - d) exceptionally, and where unavoidable, conditions of contract requested by suppliers; but only where the use of these conditions has been previously agreed by the Head of Legal Services
- 15.3 CSOs 15.1 and 15.2 do not apply to low value, one-off retail purchases where a purchasing card is used.
- 15.4 All contracts, irrespective of value, shall as a minimum clearly specify:
- a) a full description of what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, received or completed)
 - b) the quantities to be provided
 - c) the provisions for payment (i.e. the price to be paid and when)
 - d) the time(s) and location(s) for delivery or performance
 - e) the provisions for the Council to terminate the contract
 - f) the provisions for indemnity and insurance for service contracts
 - g) such other conditions and terms as may be agreed between the parties which shall include, where relevant, a reference to continuous improvement in accordance with the best value legislation.
- 15.5 Where contracts are awarded which involve the transfer of Council staff, or of former Council staff who were previously the subject of an outsourcing of service, they shall include provisions to ensure that the relevant regulations are complied with and that the Council is indemnified. Where the Council is a third party to any transfer, the contract shall in addition ensure that the Council has access to staff and employee information on request
- 15.6 Every relevant contract must provide for the Council to cancel the contract and recover any resulting losses if the supplier or his or her employees or agents, with or without his or her knowledge:
- a) does, or has done, anything improper to influence the Council to give him or her the contract;
 - b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972

- 15.7 In appropriate cases, after consultation with the Head of Legal Services, the supplier shall provide for the payment of liquidated damages by the supplier where he or she fails to complete the contract in accordance with the terms of the contract, including within the specified time.
- 15.8 In appropriate cases, after consultation with the Head of Legal Services, the contract shall be required to give sufficient security for the due performance of his or her contract.
- 15.9 Where a relevant contract exceeds:
- a) £75,001 in total value it must be signed by at least two officers of the Council, being the relevant authorised officer and one other officer above salary scale point 33; and
 - b) above EU threshold in total value it shall be executed under the Common seal of the Council.
- 15.10 Unless otherwise agreed by the Head of Legal Services, a contract must be sealed where:
- a) the Council may wish to enforce the contract more than six years after its end; or
 - b) there is any doubt as to whether valid consideration is being created under the contract.
- 15.11 Contract sealing shall be carried out by the Head of Legal Services or those persons who have been given authority to do so from time to time.

Other Requirements

16. Prevention of Corruption & Declaration of Interests

- 16.1 Officers shall comply with the Council's Code of Conduct for Employees and the Anti-Fraud and Corruption Policy Statement and Strategy. In particular:
- a) no officer shall use or be seen to use their position to obtain any personal or private benefit (including benefit accruing to connected third parties) from any contract entered into by the Council;
 - b) officers' attention is drawn to the provisions of the Code of Conduct relating to the separation of roles during tendering.
- 16.2 With regards to any contract that has been proposed or entered into by the Council, officers must disclose in writing to their Director any instances:
- a) where they have any relationship with a supplier; or
 - b) where they have any personal interest (financial or non-financial) which could reasonably be considered to conflict with the Council's interests.

17. Procurement Guidance

In support of these Standing Orders, the Head of Commercial Services may issue guidance, procedures and standard documents as Procurement

Guidance. Authorised Officers shall comply with such guidance when undertaking procurement activities and contract management.

Agenda Item 8

Changes to Gloucestershire County Council Constitution by the Monitoring Officer

In the exercise of my powers set out in Article 14.02.1 of the Council's Constitution, I make the following amendment to the Council's Constitution:

Rules of Procedure Part 4 Section 15.2 of the Constitution:

The following explanatory note shall be added as set out below:

15.2 Chairperson's casting vote

If there are equal numbers of votes for and against, the Chairperson will have a second or casting vote.

***Note** – To avoid deadlock on the election of a Chairperson or on a procedural motion relating to the election of a Chairperson, the matter will be determined by the toss of a coin.*



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Jane Burns
Monitoring Officer
Gloucestershire County Council
January 2015

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