

Ward: All

Amendments to the Constitution

Report by the Solicitor to the Councils

1.0 Summary

1.1 This report seeks to update Members of the Joint Governance Committee with recent amendments made to the Councils' Constitutions by the Monitoring Officer.

2.0 Background

2.1 The Monitoring Officer has a duty to maintain an up-to-date version of the Constitution and ensure it is publicly available, and has authority to make minor amendments to it.

3.0 Proposals

Petition Scheme

3.1 The Monitoring Officer has made a minor amendment to the Councils' Petition Scheme to include a provision that a petition submitted under the petition scheme may be rejected if it is also submitted in response to a formal consultation process.

3.2 This amendment is primarily for clarity; a formal or statutory consultation process is a separate process from the petition scheme and a response to consultation should not trigger the action under that scheme. The amendment was published and came into effect on 31st March 2016.

Scheme of Officer Delegations

3.3 The Scheme of Officer Delegations has been amended by the Monitoring Officer. The revised scheme has been published and came into effect on 26th April 2016. The majority of amendments are as a result of recent changes to the Officer structure of the organisation, resulting in functions being the responsibility of different Heads of Service. Other amendments haveoDelegation has been given to the Director for Communities to manage the relationships with South Downs Leisure Trust and Impulse Leisure.

- Changes have been made to reflect the fact that the function of Freedom of Information and Data Protection have been transferred to the Director for Digital and Resources.

- Officers dealing with staffing matters are now prevented from authorising redundancies, which require Member approval, in line with current practice and protocol.
- Changes have been made to reflect the fact that the function of parking has transferred to Head of Customer Services.
- The authority of the Solicitor to the Council has been restricted when settling legal proceedings with a confidentiality clause which now requires Member approval.
- Changes have been made to reflect the fact that functions relating to water supply, draining, highways and coastal duties are the responsibility of the Head of Business and Technical Services.

Council Procedure Rules

3.5 Various amendments have been made to the Council Procedure Rules which can be found in Part 4 of the Councils' Constitutions. The changes took effect on 5th May 2016 and have been made publicly available. Details of each amendment made are set out at Appendix B to this report and are summarised as follows:-.

- Substitutes on regulatory committees are now required to have had training within the previous 2 years.
- Questions by the public at Council meetings continue to be permissible, but not statements, and only by those who live, work or own property in the District or Borough.
- Members continue to be able to ask questions on notice at Council meetings but not if the same question has been asked in the previous 6 months.
- Motions at Council will be referred to Planning or Licensing Committee if they relate to a planning or licensing matter.
- Council is unable to rescind decisions made within the previous 6 months, unless the subsequent decisions of other bodies have had significant impact on the decision.
- The Chairman of a sub committee may agree the minutes of that meeting.
- References to record of attendance sheets have been removed.
- Clarity has been provided around the appointment of the Leader of the Opposition as no such appointment will be made if the numbers of the second and third largest groups are equal.

4.0 Legal

4.1 Article 11, paragraph 11.03, of the Councils' Constitutions sets out the Functions of the Monitoring Officer and states "The Monitoring Officer has the delegated authority to make minor and consequential amendments to the Constitution at any time".

5.0 Financial implications

5.1 There are no financial implications arising from this report

6.0 Recommendation

- 6.1 Members of the Joint Governance Committee are asked to note the contents of the report.

Local Government Act 1972

Background Papers:

Adur District Council Constitution
Worthing Borough Council Constitution

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Schedule of Other Matters

1.0 Council Priority

1.1 [Set out which of the Council's priorities the proposal meets and how.]

2.0 Specific Action Plans

2.1 (A) [Set out the specific outcomes from the Corporate Plan the proposal is aimed at achieving and how]
(B) [Set out any specific government target the proposal is aimed to achieve]

3.0 Sustainability Issues

3.1 [Details of any sustainability issues, checklist to be completed and submitted to Community Wellbeing]

4.0 Equality Issues

4.1 [Details of any equality issues or how the proposal improves the current position]

5.0 Community Safety Issues (Section 17)

5.1 [Details of how the proposal helps reduce crime and disorder and to meet the Council's duty regards crime and disorder reduction targets]

6.0 Human Rights Issues

6.1 [Does the proposal impinge on anyone's human rights and if so how is it justified under the Human Rights Act? Human rights include:
Right to a fair trial, respect for family life, private life, home and correspondence, freedom of thought, expression, assembly and association and protection and quiet enjoyment of property and possessions. Also ask, is the action proportionate to the anticipated response or outcome?]

7.0 Reputation

7.1 [Is the proposal likely to have an impact on the reputation of the Council(s)]

8.0 Consultations

8.1 (A) [Details of relevant internal (staff UNISON etc) and external (including Stakeholder Groups; etc.) consultation]
(B) Include how have you used the feedback from the consultation in this proposal

9.0 Risk Assessment

9.1 [Details of risks of doing or not doing? Are there insurance or public liability issues? Is there a statutory duty on the Council to do what is proposed and what are the

consequences of not doing it? Highlight if this report meets an element in the corporate business continuity plan]

10.0 Health & Safety Issues

10.1 [Details of any health and safety issues]

11.0 Procurement Strategy

11.1 [Confirm that the report complies with the Procurement Strategy or explain why the Strategy had not been complied with. Include how your recommendation meets the strategy making reference to Best Value principles if necessary]

12.0 Partnership Working

12.1 [Detail any partnership working the report/proposal seeks to promote]

APPENDIX A

Part 4 : Scheme of Delegations

1.5	Sub Delegations
1.5.7	Where an officer is authorised to act, either under this Scheme or by a specific resolution of Full Council, Executive, an Individual Executive Member or a Committee, he/she may further delegate the authority to exercise a specific power on behalf of this Council to an Officer of another Council, whilst still retaining the delegation themselves. All other provisions of paragraph 1.5 of this Scheme must be complied with when exercising this provision.

To enable partnership working with other Local Authorities.

2.3	Director for Communities		
No	Delegation	Consultation	Limitations
2.3.2	To manage the relationship between Worthing Borough Council and South Downs Leisure Trust		

To reflect the changes in Worthing Borough Councils' provision of leisure services via South Downs Leisure Trust

2.3.3	To manage the relationship between Adur District Council and Adur Community Leisure (Impulse Leisure)		
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To reflect the changes in Adur District Council's arrangements in respect of leisure facilities.

2.4	Director for Customer Services		
No	Delegation	Consultation	Limitations
2.4.1	To be the link officer with the Commissioner for Local Administration in England ("Local Government Ombudsman")	Monitoring Officer (to reflect the statutory role of the Monitoring Officer in respect of maladministration) and the appropriate Head of Service	

To implement provisions of section 5 Local Government and Housing Act 1989.

2.5	Director for Digital and Resources		
No	Delegation	Consultation	Limitations
2.5.1	To respond to requests under Data Protection and Freedom of Information legislation		With the exception of requests for review and appeals.

To reflect the change in function as in April 2016 the function of responding to FOI and DPA requests transferred from Legal Services to the PA's to the Directors under the management of the Director for Digital and Resources, with the review function being retained in Legal Services.

2.5.2	To act as the Senior Information Risk Owner for both Councils in respect of the function of Information Security.		
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For completeness

2.7	Chief Executive, all Directors and all Heads of Service		
No	Delegation	Consultation	Limitations
2.7.17	To manage land, property (including rent reviews) and other assets allocated to the functions for which they are responsible.		
2.7.18	To vary the terms and conditions of leases and licences or negotiate the surrender of leases and licenses.	Consultee removed	
2.7.19	To give landlord's consent for uses, subject to planning permission.	Consultee removed	

For clarity

2.7.30	To determine and take action in relation to all staff matters in accordance with the Officer Procedure Rules.	Where specified in the Officer Procedure Rules, Solicitor to the Council Head of Human Resources	In accordance with Officer Procedure Rules and all Council policies and procedures. To exclude the determination of redundancies (voluntary or otherwise) and the determination of termination of
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			contracts of employment on the grounds of efficiency of the service.
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To accord with Executive Members request and to formalise existing protocol and practice.

3.1	Head of Housing	Consultation	Limitations
No	Delegation	Consultation	Limitations
3.1.2	To exercise the Council's functions relating to homeless persons.		With the exception of requests for reviews under s202 Housing Act 1996.

To reflect the fact that requests for reviews against homelessness decisions made in accordance with s202 Housing Act 1996 are dealt with by Head of Legal to ensure independence and good governance.

3.1.8	To determine and where appropriate give consent for alterations or extensions to former Council houses and flats		
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To reflect the fact that this function lies within the responsibilities of the Head of Housing rather than the Head of Growth.

3.2	Head of Wellbeing		
No	Delegation	Consultation	Limitations
3.2.4	To determine whether or not a simple caution should be administered following an investigation into an alleged criminal offence	Solicitor to the Council	There must be a full admission It must be a minor matter It must be in the public interest It must be a first offence Copy to be sent with reasons to the Solicitor to the Council To exclude the administration of the caution.

For clarity

3.6	Head of Customer Services		
No	Delegation	Consultation	Limitations
3.6.1	All matters relating to on and off street parking	In respect of Adur District Council, consultation with the relevant Executive Member	

To reflect the fact that the function of parking services has been transferred from the remit of the Head of Growth to the Head of Customer Services.

3.9	Head of Legal Services and Monitoring Officer		
No	Delegation	Consultation	Limitations
3.9.1	<p>Legal Proceedings:</p> <p>a. To determine what, if any legal action should be taken following any investigation into a criminal matter (except in relation to Health & Safety at Work).</p> <p>b. To institute, prosecute or terminate any proceedings which the Council is empowered to undertake in or before any Court, Tribunal, Inquiry or by way of Fixed Penalty Notice (except in relation to Health & Safety at Work).</p> <p>c. To defend or settle any proceedings brought against the Council (except in relation to Health & Safety at Work).</p> <p>d. To take any action incidental or inclusive to or which would facilitate any action under this paragraph.</p> <p>e. To administer simple cautions.</p> <p>f. To determine whether or not any legal proceedings should be taken in any particular case or set of circumstances.</p>		In respect of settling legal proceedings a confidentiality clause may not be included unless the prior written agreement has been obtained from the Leader of the Council (or Deputy in their absence) and the Leader of the Main Opposition (or Deputy in their absence).

To implement decision of the Councils on 23rd February 2016 (WBC) and 25th February 2016 (ADC).

3.9.22	To respond to requests for review under Data Protection and Freedom of Information legislation.		
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To reflect the change in function as in April 2016 the function of responding to FOI and DPA requests transferred from Legal Services to the PA's to the Directors under the management of the Director for Digital and Resources, with the review function being retained in Legal Services.

3.9.28	To determine the approval of the Adur District Council and Worthing Borough Council logo in appropriate circumstances.	In consultation with the Leader of Adur District Council in respect of the Adur District Council logo. In consultation with the Leader of Worthing Borough Council in respect of the Worthing Borough Council logo.	
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To implement Joint Leader decision JAW/018/13-14

3.11	Head of Human Resources		
No	Delegation	Consultation	Limitations
3.11.5	To comply with all legislation and government guidance on transparency in pay within the Council, including taking the annual pay policy statement to Council		

For clarity and completeness

3.11.6	To execute settlement agreements between the Council and its employees or former employees in circumstances where redundancy or termination of contract on the grounds of efficiency of the service have been approved.	Solicitor to the Councils	
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For operational efficiency – currently sub delegated from Solicitor to the Councils

3.12	Head of Business & Technical Services		
No	Delegation	Consultation	Limitations
3.12.2	To manage the improvement, refurbishment, maintenance and new build provision of the Council's non-housing property portfolio not specifically the responsibility of other officers.		

For completeness

3.12.3	To exercise the Council's powers in respect of water supply, sewerage and drainage.		Such development must be permitted in a General Permitted Development Order or have been granted planning permission
3.12.4	To exercise the Council's powers in respect of land drainage.	Adur DC - relevant Executive Member	
3.12.5	To exercise the Council's powers affecting the design or maintenance of highways		
3.12.6	All matters relating to coastal and dredging licence applications		
3.12.7	All matters related to the Council's powers and duties in relation to the coast, rivers and harbours		

To reflect the fact that these functions have been transferred from the remit of the Head of Growth to the remit of the Head of Business and Technical Services.

3.13	Head of Culture		
No	Delegation	Consultation	Limitations
3.13.2	To manage the function of Events Management	In consultation with the Council's Head of Communications and Emergency Planning Officer	

To reflect the remit of the functions of the Head of Culture

3.14	Head of Place and Investment		
No	Delegation	Consultation	Limitations

3.14.1	To approve and grant seasonal concession licence agreements on behalf of the Councils	In consultation with the relevant Executive Member, the Solicitor for the Council and the Head of Growth	
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To reflect the fact that the function of granting concessionary agreements has been transferred to the Head of Place and Investment. Consultation with Head of Growth prudent as the agreements relate to Council owned land. Consultation with Solicitor to the Council prudent as concessions are legally binding agreements.

3.15 No	Head of Growth Delegation	Consultation	Limitations
3.15.3	To determine the Council's stance in respect of and respond to consultation opinions concerning matters including, but not limited to, Neighbourhood Plans and WSCC planning applications unless they are for 'major' development within the meaning of the T&CP (General Development Procedure) Order.	In respect of Neighbourhood Plans, in consultation with Relevant Executive Member	

For completeness

3.15.14	Removed		
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To reflect the fact that the approval of circuses at Brooklands is now dealt with by the Head of Environment rather than the Head of Growth.

3.15.19	Removed		
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To reflect the fact that this function lies within the responsibilities of the Head of Housing rather than the Head of Growth

3.15.20	Removed		
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To reflect the fact that the function of parking services has been transferred from the remit of the Head of Growth to the Head of Customer Services.

3.15.21	Removed		
3.15.22	Removed		

3.15.23	Removed		
3.15.24	Removed		
3.15.25	Removed		

To reflect the fact that these functions have been transferred from the remit of the Head of Growth to the remit of the Head of Business and Technical Services.

3.17	Head of Communications		
3.17.1	Removed		

To reflect the fact that the publication eZine is no longer in existence

4.2	Functions Relating to Democratic Process			
1.1.1	s. 21A Local Government Act 2000 (as amended)	Decision making in respect of Councillor Call for Action	Director for Communities	Head of Wellbeing

To reflect changes to legislation

4.5	Functions in relation to Public Health			
4.5.12	European Communities Act 1972	Food Safety	Director for Communities	Head of Wellbeing

For completeness

APPENDIX B

Part 4: Council Procedure Rules

2.4 Appointment of Substitute Members to Committees and Sub Committees

CPR amended to include the requirement for training within the last 2 years to sit as a substitute on a regulatory (i.e. planning or licensing) committee.

11.0 Questions and Statements by the Public

Amended to allow questions only, not statements.

Amended to provide that only those members of the public who live, work or own property in the District / Borough may ask a question.

Amended to provide that the questioner when giving notice of the question must provide their name, address and contact details.

Amended to remove the requirement for each question to be put in a book open to public inspection, and instead for it (when notice has been given) to be made available via the website.

Amended to include a time limit on supplementary questions of 2 minutes.

Amended to include a time limit on the verbal answers provided of 5 minutes in total for the original question and 2 minutes for the supplementary question.

Amended to include time limits of 5 minutes per question and 2 mins per supplementary question, for questions asked at Executive and Committee meetings.

Amended to allow the Chairperson of Executive / Committee meeting to group similar questions together and summarise them.

12 Questions on Notice by Members at Full Council

Amended to prevent the same or similar question being asked by a Member within 6 months.

13 Leader's Report to Full Council

Amended to clarify the fact that this is a question and answer session rather than a debate.

14.5 Automatic Reference of Motions

Amended to provide that if a motion at Full Council relates to a Planning or Licensing matter it will be referred to that Committee for consideration and determination, and that

only a motion which is not within the remit of the Executive or a Regulatory Committee will be considered at Full Council.

22 Previous Decisions and Motions

The rules prohibiting rescinding decisions of the Council within the previous 6 months have been amended to enable such a decision to be reconsidered where the subsequent decisions of other bodies have had significant impact on the decision. For example where the Council makes a decision to record all meetings held jointly with another body and that body decides not to, making the Council's decision impracticable and in need to further consideration.

24 Voting

Rule 24.4 has been amended to clarify the fact that if a recorded vote is requested it will supersede any request for a ballot.

26 Minutes

Amended to reflect the fact that when a sub committee meets to hear a specific licensing, standards or staffing matter the Chairman of that meeting may agree the accuracy of the minutes; the main Committee may consist of different people whom it is not appropriate to ask to agree the accuracy of the minutes of a meeting in which they were not involved and didn't attend.

29 Record of Attendance

Amended to reflect the fact that we now note apologies for absence on the agenda for Council meetings rather than asking Members to sign an attendance sheet.

39 Appointment of the Leader of the Main Opposition

Rules amended to clarify that if there is no 'next largest political group' either because the remaining groups have equal numbers or because there is no opposition groups, only individual opposition Members, then there will be no appointment to the role of Leader of the Opposition.