



Amendments to the Constitution

Report by the Monitoring Officer

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, and asks Members to note those amendments.
- 1.2 The report seeks Members' approval, and recommendation to each Council, of revised terms of reference for the Joint Governance Committee.
- 1.3 The report also seeks Members' approval, and recommendation to each Council, of revised Council Procedure Rules relating to Motions on Notice.

2.0 Background

- 2.1 The Monitoring Officer has a duty to maintain an up-to-date version of the Constitution and to ensure that it is publicly available. The Monitoring Officer has the authority, as set out in Article 11 and at paragraph 3.9.24 of the Officer Scheme of Delegations in the Constitution, to "make minor and consequential amendments to the Constitution at any time".
- 2.2 The Joint Governance Committee within its terms of reference has the responsibility to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.
- 2.3 Article 14.03 of the Constitution provides that changes to the Constitution will only be approved by the Full Council after consideration of the proposal by the Joint Governance Committee.
- 2.4 The purpose of the Constitution is to:
 - enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;

- support the active involvement of citizens and encourage all sections of the Borough and District's communities to be involved in the Council's decision-making processes;
- help Elected Members represent their constituents more effectively;
- create a powerful and effective means of holding decision-makers to public account;
- ensure that no one will review or scrutinise a decision in which they were directly involved;
- ensure that those responsible for decision-making are clearly identified to local people and that they explain the reasons for their decisions;
- provide a means of improving the delivery of services to the community;
- balance speedy and reasoned decision-making with adequate checks and balances;
- place high standards of conduct and probity at the centre of decision-making.

3.0 Proposals

3.1 Part 3: Responsibility for Functions

3.1.1 Terms of Reference of the Joint Governance Committee

Part 3 of each Council's Constitution sets out the Terms of Reference of each Council Committee, and there are some changes required to the terms of reference for the Joint Governance Committee.

It is proposed that the Joint Governance Committee recommend to each Council that the following changes are made, with effect from 1st May 2018:

<p>Para 5.13 e to be expanded to note that the Committee shall co-opt one Member of Lancing Parish Council and one Member of Sompting Parish Council to advise them on Parish matters when under consideration, and that such co-opted Parish Members will be present in an advisory capacity only and not entitled to vote at such meetings.</p>	<p>To reflect provisions elsewhere including in particular the Standards Procedure Rules</p>
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<p>To add the function of granting dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Code of Members Conduct and the Localism Act 2011 in circumstances where the Monitoring Officer does not exercise his/her delegation</p>	<p>To give effect to the provisions of section 33 Localism Act 2011</p>
<p>To add the function of being able to co-opt, in an advisory capacity only, any person who is an Independent Person appointed by another Local Authority to advise the Joint Governance Committee or its Sub-Committee on such terms as the Joint Governance Committee may determine</p>	<p>To provide flexibility, particularly in circumstances where the Councils' Independent Persons may be unavailable, or conflicted.</p>
<p>To add the function of receiving an annual report from the Monitoring Officer on the local resolution and assessment of allegations of breaches of the Code of Conduct for Members, by Members of the District and Borough Council and the Parish Councils in the District of Adur.</p>	<p>To enable Members of the Joint Governance Committee to better fulfil their roles in respect of standards, ethics and probity.</p>
<p>To add a function relating to determining allegations that a Member of a Parish Council within the District of Adur has failed to comply with the relevant Parish Council Code of Conduct in accordance with the provisions of the Localism Act 2011</p>	<p>To comply with statutory requirements of the Localism Act 2011.</p>
<p>To add a function to the terms of reference of the Committee to include any other function imposed by statute</p>	<p>To provide flexibility and ensure completeness.</p>

3.1.2 Executive Member for Resources

The Leader at Worthing Borough Council has changed the name of the portfolio holder from 'Executive Member for Resources' to 'Executive Member for Digital and Resources' to better reflect the role and its responsibilities.

The Monitoring Officer proposes, under her delegated authority, to amend reference in Part 3 of the Worthing Constitution to the 'Executive Member for Resources' to the 'Executive Member for Digital and Resources', to be effective from 1st April 2018.

3.2 **Part 4: Rules and Procedures**

3.2.1 Council Procedure Rule 32: Members' Conduct

CPR 32 relates to Member Conduct at meetings and makes provision at 32.2 for the Chairman of a meeting to be able to stand during a debate, obliging other Members to be silent and seated. The title of the CPR implies the provision relates to only meetings of the Full Council, whilst it should apply equally to meetings of the Council's Committees and Sub-Committees.

It is proposed that the Monitoring Officer, under her delegations, amends the title of this provision to ensure it applies to all meetings of the Councils, their Committees and Sub-Committees, with effect from 1st April 2018.

3.2.2 Council Procedure Rule 14: Notices of Motion

CPR 14 relates to Notices of Motion at meetings of each Full Council. Experience recently has indicated that the procedures are not as efficient nor as clear as they could be. A complete revision of this procedure rule is therefore recommended.

The existing procedure rule and a proposed revised procedure rule are attached to this report as Appendix A.

The primary changes proposed can be summarised as follows:

- The reasons for the Director for Communities rejecting a Motion on Notice have been extended to mirror the circumstances when a public question may be rejected. The reasons now include where the motion is improper, out of order or not relevant, where it requires disclosure of confidential or exempt information, where it is substantially the same as a motion received and accepted in the past 6 months, where the proposal in the motion would be unlawful, and where it refers to legal proceedings taken or contemplated.
- A provision has been added that where the Council is involved in a consultation process, they will not accept a motion expressing support or objecting to the proposals.
- The number of motions to be accepted has been amended from no Member having more than 2 motions on the same agenda to the 3 largest political groups being entitled to bring 2 motions each on any agenda and any other group, or a Member not belonging to a political Group, one each.

- A provision has been included for automatic referral of any motion within the remit of any Council Committee, rather than previously this applied to only Executive and Regulatory Committees.
- Provision has been made for Motions which do not fall within the remit of any Committee, do not incur expenditure and are merely declaratory to be dealt with at the Council meeting where the Motion is received, whilst those that include a proposal for the Council to take substantive action to be considered at a future meeting.
- Provision has been made for Motions to be considered at Full Council to be dealt with in accordance with the rules of debate, and where they are not seconded there is a requirement for them to be so seconded after a 2 minute speech from the proposer, or fail. For motions being automatically referred to a Committee, the proposal is for them to be so referred without speech from the proposer or seconder, and for motions not seconded to fail.

It is proposed that the Joint Governance Committee recommends to each Council the adoption of a revised Council Procedure Rule 14 with effect from 1st May 2018.

3.2.3 Standards Procedure Rules

Paragraph 1.3 of the Standards Procedure Rules provides that the views of the Independent Person must be sought at the assessment stage and may be sought at any other stage of the procedure. This does not accord with the provisions of the Localism Act 2011 at section 28 which provides that the views of the Independent Person may be taken into account at the assessment stage and must be taken into account before determining a matter which it has been decided is to be investigated.

It is proposed that the Monitoring Officer, under her delegations, amend this error and publish amended Standards Procedure Rules with effect from 1st April 2018.

3.2.4 Scheme of Officer Delegations

3.2.4.1 Authorised / Proper Officers in relation to Public Health

Section 4.5 of the Scheme of Officer Delegations deals with formal appointments of Officers to act as Authorised or Proper Officers for specific purposes as required by various pieces of legislation to enable them to exercise statutory functions. Since the provision was initially drafted, legislation has changed and the list is currently far from complete or comprehensive.

It is proposed that the Monitoring Officer make the following amendments to paragraph 4.5 of the Officer Scheme of Delegations, with effect from 1st April 2018, which deals with the appointment of Authorised or Proper Officers for functions relating to Public Health to add the following legislation:

Pet Animals Act 1951

Caravan Sites and Control of Development Act 1960
Animal Boarding Establishments Act 1963
Riding Establishment Act 1964 and 1970
Scrap Metal Dealers Act 1964
Breeding of Dogs Act 1973 and 1991
Part 1 Local Government (Miscellaneous Provisions) Act 1976
Zoo Licensing Act 1981
Part 1 and Part 7 Local Government (Miscellaneous Provisions) Act 1982
Public Health (Control of Disease) Act 1984
Control of Pollution (Amendment) Act 1989
Clean Neighbourhoods and Environment Act 2005
Health Act 2006
Anti Social Behaviour, Crime and Policing Act 2014
Environmental Protection Act 1990
Environment Act 1995
Prevention of Damage by Pests Act 1949
Control of Pollution Act 1974
Dangerous Wild Animals Act 1976
Refuse Disposal (Amenity) Act 1978
Housing Act 1985, 1989 and 2004
Clean Air Act 1993
Pollution Prevention and Control Act 1999
Environmental Damage Regulations 2009
Health and Safety at Work Act 1974
Animal Welfare Act 2006
Building Act 1984

3.2.4.2 Functions in relation to Entry of Land or Premises

Section 4.7 of the Scheme of Officer Delegations deals with appointments of Officers authorised to enter land or premises in connection with their duties as required by various pieces of legislation to enable them to exercise statutory functions. Since the provision was initially drafted, legislation has changed and the list is currently far from complete or comprehensive.

It is proposed that the Monitoring Officer make the following amendments to paragraph 4.7 of the Officer Scheme of Delegations, with effect from 1st April 2018, which deals with the authorisation of Officers to enter land or premises to add the exercise of their duties in respect of functions under the following legislation:

Dangerous Wild Animals Act 1976
Riding Establishments Act 1964 and 1970
Building Act 1984

3.2.4.3 Delegations to the Head of Building Control and Land Charges

The post of Head of Building Control and Land Charges has now been deleted from the Council's Establishment List, and the responsibilities transferred to the Head of Planning and Development.

The Monitoring Officer therefore proposes to, under her delegated authority, transfer these delegations to the Head of Planning and Development, with effect from 1st May 2018. The Head of Planning and Development is, within the Scheme of Officer Delegations, still referred to as the Head of Growth (a previous Job Title) and therefore the Monitoring Officer will also rectify the Job Title accordingly.

3.2.4.4 Head of Environment and Head of Waste and Cleansing

The posts of Head of Waste and Cleansing and Head of Environment have been deleted from the Establishment List and the responsibilities transferred to the new post of Head of Environment and Waste. The Monitoring Officer therefore proposes to amalgamate and transfer the delegations to those of the Head of Environment and Waste, under her delegated authority, to be effective from 1st April 2018.

3.2.4.5 Head of Customer Services

The post of Head of Digital and Design has been removed from the Council's Establishment List and the post of Head of Customer Services is now known as Head of Customer and Digital Services. The Monitoring Officer proposes making consequential changes to the Officer Scheme of Delegations, with effect from 1st April 2018, under her delegated powers.

3.3 **Part 5: Codes and Protocols**

3.3.1 Code of Conduct for Council Officers

The public is entitled to demand of a local government Officer conduct of the highest standard and public confidence in an Officer's integrity is paramount. All duties must be performed by Officers with honesty, integrity, impartiality and objectivity. To this end the Councils have an Officer Code of Conduct which forms part of the Codes and Protocols of the Constitutions and also forms part of an employee's terms and conditions of employment. The Code makes similar provisions to that relating to Members and contained within the Members Code of Conduct.

The Code of Conduct for Officers has been reviewed by the Monitoring Officer, and it is proposed that minor amendments be made, with effect from 1st April 2018. The changes can be summarised as follows:

- To expand on the Council's Customer Care Standards which have recently been updated
- To provide that all additional employment must be declared, rather than the previous provision which related to Officers of a certain grade and above.
- To expand the provision that Council Officers having a financial interest in any contract must declare it, to include their spouse or partner too.
- To amend the provision that all relationships between Officers and Members be avoided, to provide that all relationships between Officers and Members are declared, to ensure transparency. Also to expand the provision to include relationships between Officers and other Officers.

- To amend, for consistency, to provide that all declarations, relating to additional employment, relationships, gifts and hospitality, and financial interests in contracts are made to Heads of Service in the first instance.

It is proposed that the amendments be made by the Solicitor to the Council under her delegated authority as they are considered to be minor. They are brought about from a desire to update the Code, ensure consistency and provide for relationships between Officers.

3.3.2: Protocol for Relationships Within the Councils

Mutual trust and respect between Members and Officers is at the heart of a Council's good governance arrangements. They are essential if the partnership necessary for the effective running of a Local Authority is to succeed. The Councils have a Protocol for Relationships Between Members and Officers of the Council which is designed to define roles and clarify responsibilities, avoid conflict and prevent duplication, to secure compliance with the law and internal practices, and to promote trust, openness, fairness and honesty.

The existing Protocol which forms part of each Councils' constitution has been reviewed by the Monitoring Officer and it is proposed that it be amended under delegated authority, to relate to relationships between Officers and other Officers within the Council as well as to relationships between Officers and Members. It is proposed that the amendments become effective on 1st April 2018.

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 The Joint Governance Committee is recommended to:
- 6.1.1 Note the Monitoring Officer's use of her delegated powers to make minor and consequential amendments to the Constitution as set out at paragraph 3.1.2, 3.2.1, 3.2.3, 3.2.4, 3.3.1 and 3.3.2 in the report.
- 6.1.2 To recommend to each Council the adoption of the amended terms of reference for the Joint Governance Committee as set out in paragraph 3.1.1 of the report with effect from 1st May 2018.

- 6.1.3 To recommend to each Council the adoption of the amended Council Procedure Rule 14, relating to Motions on Notice, as set out in Appendix A to this report and paragraph 3.2.2 above, with effect from 1st May 2018.

Local Government Act 1972

Background Papers:

Adur District Council Constitution

Worthing Borough Council Constitution

Localism Act 2011

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Schedule of Other Matters

1.0 Council Priority

1.1 Good governance and up-to-date Constitutions support the Councils' priorities relating to partnership working.

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 Matter considered and no issues identified.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

6.1 Matter considered and no issues identified.

7.0 Reputation

7.1 Good governance arrangements help to protect the reputations of the Councils.

8.0 Consultations

8.1 Matter considered and no issues identified.

9.0 Risk Assessment

9.1 The risk of not having an up-to-date Constitutions is that procedures and practices may not be transparent, fair and consistent and may increase the risk of legal challenge.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

- 12.1 Constitution arrangements enable and support the governance of partnership working.

**EXISTING COUNCIL PROCEDURE RULE 14
ADOPTED 14 NOVEMBER 2016**

14.0 MOTIONS ON NOTICE AT FULL COUNCIL

14.1 Notice

14.1.1 Except for motions that can be moved without notice under Council Procedure Rule 15, written notice of every motion, signed by at least one Member, must be delivered to the Director for Communities not less than 10 clear working days before the date of the meeting. These will be entered in a book open to public inspection.

14.1.2 If the notice of motion is sent by electronic means, it shall be received not less than 10 clear working days before the day of the meeting at democratic.services@adur-worthing.gov.uk and acknowledgement of its receipt shall be obtained.

14.1.3 The Director for Communities will date and number the motion in the order in which it is received.

14.1.4 All notices of motion shall be sent direct to Full Council by the Director for Communities and shall have appended to them, by the Council Leadership Team, any relevant existing Council policies which shall determine the appropriate means of dealing with it.

14.2 Scope

Every motion shall be relevant to some matter in relation to which the Council has powers or duties or which affects the administration or condition of the Borough.

14.3 Motions set out in Agenda

14.3.1 Motions for which notice has been given will be listed on the agenda, subject to the exception below, in the order in which notice was received by the Director for Communities, unless the Member giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.

14.3.2 Such motions will be placed on the agenda immediately before the consideration of exempt information items.

14.3.3 If the Director for Communities considers that the motion is improper, out of order or not relevant to any question affecting the administration or condition of the borough, he/she shall return the motion to the Member of the Council who sent it, stating that it will not be inserted on the agenda and providing reasons.

14.3.4 Motions accepted for inclusion shall have appended any relevant existing Council policies.

14.3.5 No Member shall have more than two motions on the same agenda.

14.4 Speaking to propose a Motion

14.4.1 If a motion has been signed by only one Member, the proposer may speak for a maximum of 2 minutes without the motion being seconded.

14.4.2 If the motion is then not seconded it shall fall.

14.4.3 If the motion is seconded then Rules 14.5 and 14.6 shall apply.

14.4.4 If a motion set out on the agenda is not moved by a Member who gave the notice or by some other Member on his or her behalf, it shall be treated as withdrawn and shall not be moved without fresh notice unless postponed by the Council.

14.5 Automatic Reference of Motions

Motions shall be dealt with as set out below:

14.5.1 If any part of the subject matter of any motion comes within the remit of the Executive, upon being moved and seconded, it shall be referred without discussion to the Executive for consideration and determination.

14.5.2 Subject to rule 14.5.3 below, if the subject matter of any motion comes within the remit of any Regulatory Committee (i.e. Planning and Licensing), upon being moved and seconded, it shall be referred without discussion to such Committee for consideration and determination.

14.5.3 Where the subject matter of a motion:

- (i) is not within the remit of the Executive or a Regulatory Committee; and
- (ii) does not include a proposal for the Council to take any substantive action; and
- (iii) does not incur any expenditure

then it may be considered by the Full Council at the meeting at which it appears in the agenda.

14.6 Attendance of mover at meeting of the Executive or a Committee

14.6.1 Where a motion has been referred by Full Council to the Executive or a Committee, the mover, or the seconder in the absence of the mover, shall be entitled to attend the relevant meeting of the Executive or Committee and to explain the motion.

- 14.6.2 The Member may answer questions from the Executive or Committee, for the purposes of clarification, prior to any debate and may sit with the Committee for the item in question.
- 14.6.3 The Member may not partake in the debate, nor vote upon the item.

AMENDED COUNCIL PROCEDURE RULE 14 PROPOSED TO BE ADOPTED 1ST MAY 2018

14.0 MOTIONS ON NOTICE AT FULL COUNCIL

14.1 Notice

- 14.1.1 Except for motions that can be moved without notice under Council Procedure Rule 15, written notice of every motion, signed by at least one Elected Member of the Council, must be delivered to the Director for Communities not less than 10 clear working days before the date of the meeting. These will be entered in a book open to public inspection.
- 14.1.2 If the notice of motion is sent by electronic means, and electronic signature will suffice, and it shall be received not less than 10 clear working days before the day of the meeting at democratic.services@adur-worthing.gov.uk. The Member must ensure they obtain an acknowledgement of its receipt.
- 14.1.3 The Director for Communities will date and number the motion in the order in which it is received.

14.2 Scope

- 14.2.1 Every motion shall be relevant to some matter in relation to which the Council has powers or duties or which affects the Borough.
- 14.2.2 Where a motion is received, the Director for Communities may reject it if, in his/her opinion, the motion:
- (a) is not relevant either to some matter in relation to which the Council has powers or duties or it does not affect the Borough; or
 - (b) is defamatory, frivolous, unlawful, vexatious or offensive; or
 - (c) refers to legal proceedings taken or anticipated by or against the Council; or
 - (d) is substantially the same as a motion which has been received and accepted in the past six months; or
 - (e) requires the disclosure of confidential or exempt information; or
 - (f) is improper, out of order or not relevant.

Where a motion is rejected by the Director for Communities, he/she shall return the motion to the Member of the Council who sent it, stating that it will not be inserted on the agenda and providing reasons.

14.2.3 Where the Council is in the process of consulting with the public on a proposal, or responding to a formal consultation process, no notice of motion expressing support or objecting to the proposals shall be accepted.

14.2.4 All accepted notices of motion shall be sent, via a report, direct to Full Council by the Director for Communities. Such report will include the procedure for consideration and determination of the motion.

14.2.5 The decision of the Director for Communities will be final.

14.3 Motions set out in Agenda

14.3.1 Accepted motions for which notice has been given will be listed on the agenda, subject to the exception below, in the order in which notice was received by the Director for Communities, unless the Member giving notice of the motion gives advance written notice that they intend to propose to defer the motion until the next meeting, or withdraw the motion.

14.3.2 Such accepted motions will be placed on the agenda immediately before the consideration of exempt information items.

14.3.3 The maximum number of accepted notices of motion to be presented at a Council meeting shall be as follows:

- The 3 largest Political Groups: 2 each Group
- Any other Group: 1 each Group

14.3.4 Any Member not belonging to a Political Group may present not more than 1 notice of motion.

14.3.5 Where Members of a Political Group submit more than the permitted maximum number of notices of motion the Group shall decide which of these it wishes to table. In the absence of such a decision, notices of motion from Members of a Group shall be taken in the order in which they are received up to the permitted maximum number.

14.4 Procedure for Consideration and Determination of a Motion

Motions shall be dealt with as set out below:

14.4.1 If any part of the subject matter of any motion comes within the remit of the Executive, upon being moved and seconded, it shall be noted by Council and referred without debate to the Executive for consideration and determination.

14.4.2 If any part of the subject matter of any motion comes within the remit of any Regulatory Committee (i.e. Planning and Licensing), upon being moved and seconded, it shall be noted by Council and referred without debate to such Committee for consideration and determination.

14.4.3 Subject to rules 14.4.1 and 14.4.2, if any part of the subject matter of any motion comes within the remit of any other Council Committee, upon being moved and seconded, it shall be noted by Council and referred without debate to the relevant Committee for consideration and determination.

14.4.4 Where the subject matter of a motion:

- (i) is not within the remit of the Executive, a Regulatory Committee or any other Council Committee; and
- (ii) does not incur any Council expenditure; and
- (iii) does not include a proposal for the Council to take any substantive action and is merely declaratory;

then it may be considered by the Full Council at the meeting at which it appears in the agenda.

14.4.5 Where the subject matter of a motion:

- (i) is not within the remit of the Executive, a Regulatory Committee or any other Council Committee; and
- (ii) does not incur any Council expenditure; and
- (iii) does include a proposal for the Council to take substantive action and is more than declaratory;

then it may be considered by a future meeting of the Full Council.

14.5 Speaking to propose a Motion

14.5.1 If a motion on the agenda at Full Council is to be referred automatically to the Executive, a Regulatory Committee or another Council Committee, in accordance with Council Procedure Rule 14.4, the proposer of the motion will confirm to the Mayor their proposal of the motion as set out in the report before Council without a speech.

14.5.2 If a motion on the agenda at Full Council is to be referred automatically to the Executive, a Regulatory Committee or another Council Committee, in accordance with Council Procedure Rule 14.4, the seconder of the motion will confirm to the Mayor their seconding of the motion as set out in the report before Council without a speech.

14.5.3 If a motion to be automatically referred has been signed by only one Member, the Mayor will invite another Member present to second the motion without a speech. If the motion is not seconded it falls without debate.

- 14.5.4 If a motion on the agenda at Full Council is not to be referred automatically in accordance with Council Procedure Rule 14.4, it shall be proposed and seconded in accordance with the rules of debate set out at Council Procedure Rule 16.
- 14.5.5 If a motion on the agenda is not to be automatically referred and has been signed by only one Member, the proposer may speak for a maximum of 2 minutes without the motion being seconded. If the motion is then not seconded it shall fall.
- 14.5.6 If a motion set out on the agenda is not moved by a Member who gave the notice or by some other Member on his or her behalf, it shall be treated as withdrawn and shall not be moved without fresh notice unless postponed by the Council.

14.6 Attendance of mover at meeting of the Executive or a Committee

- 14.6.1 Where a motion has been referred by Full Council to the Executive or a Committee, the mover, or the seconder in the absence of the mover, shall be entitled to attend the relevant meeting of the Executive or Committee and to explain the motion.
- 14.6.2 The Member may answer questions from the Executive or Committee, for the purposes of clarification, prior to any debate and may sit with the Committee for the item in question.
- 14.6.3 The Member may not partake in the debate, nor vote upon the item.