

- Body:** Full Council
- Date:** 6 May 2009
- Subject:** Council Constitution - update
- Report of:** Local Democracy Manager and Monitoring Officer
- Purpose:** To advise the Council on progress in updating the constitution, seek approval to minor amendments, outline a programme for more detailed review of certain sections of the constitution and seek a formal resolution confirming the current constitution.
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- Recommendations:** (1) That progress in updating the constitution and the programme of further reviews be noted.
- (2) That the suggested amendments set out in the schedule at appendix 1 be approved and incorporated into the constitution.
- (3) That the constitution, as currently published on the Council's website, be confirmed (including the updated proper officer list).
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1.0 Introduction

- 1.1 The Council is required under provisions of the Local Government Act 2000 to have a written constitution. The constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to the people it serves. The Council's current constitution was originally adopted in May 2002 and has been the subject of update and amendment since that time.
- 1.2 Some of the content of the constitution is required by law and other content is for the Council itself to determine. The Local Government Act 2000 (Constitutions) (England) Direction 2000 issued under the authority of Parliament by the Secretary of State specifies certain matters which must be included in a council's constitution and this along with a model constitution and

associated guidance published by the Government at the time forms the basis of our constitution.

- 1.3 The constitution can be viewed on the Council's website at <http://www.eastbourne.gov.uk/council/constitution/>

2.0 Update of constitution

- 2.1 Updates to the constitution are made either because of legislative change or following decisions made by the Council. Authority is given to the Council's Monitoring Officer to incorporate any required changes into the constitution although in practice this work is largely done within the Local Democracy team. The Constitution, at Article 15.03 (b) states:

***Minor or Inconsequential Changes.** The Monitoring Officer has delegated authority to update the Constitution arising from decisions of the Council, or Cabinet, or where legislation requires a change in wording or terminology, such changes to be reported to Councillors.*

- 2.2 Due to work pressures and staff shortages experienced in the last 2 years routine updating of the constitution was delayed. Efforts are now well in hand to bring the constitution up to date. In addition we are seeking to identify sections which may require a more detailed review and which may require Council approval to any changes.
- 2.3 Recent changes which have now been incorporated into the constitution (all either the result of Council decisions or following legislative changes) include the new Audit Committee terms of reference, changes to the way the Standards Committee is constituted and investigations carried out, updated Scrutiny Committee terms of reference and procedures, revised Access to Information Procedure rules and the revised Council meeting debating procedures.
- 2.4 The current exercise has focussed primarily on bringing the constitution up to date, though as Members will appreciate this is an almost constant task. For example, decisions taken elsewhere on the agenda for both this Council meeting and the Annual Meeting will require further amendments to the constitution, such as updating Part 7 which sets out the Council's structure and memberships, further changes to the Scrutiny procedures to incorporate the new Councillor Call for Action provisions, designation of the Scrutiny Committee as the Council's "Crime and Disorder Committee", the new petitions procedures and the updated corporate plan.
- 2.5 In the course of carrying out this updating we have identified a number of relatively minor changes which could usefully be incorporated into the constitution. None of these are considered to be controversial and in many instances simply reflect current arrangements. These are set out in appendix 1 to this report and Members are asked to approve their adoption.

- 2.6 Included in the appendix referred to above are changes that respond to the issue raised recently in connection with taxi licensing. This concerns the respective roles of Cabinet and the General Licensing Committee in relation to licensing decisions where the final decision is required to be made by the Council's "executive". The proposed change makes it clear that the General Licensing Committee has an advisory role in such matters.

3.0 Scheme of Delegation to Officers and Proper Officer List

- 3.1 The current delegation scheme is we feel in need of a thorough review. In broad terms it is regarded as an effective scheme, however, over the years it has been subject to numerous additions and amendments. The pending changes to the Council's senior management structure will also require changes to be made. In the circumstances a full review is therefore proposed. This work will be led by the Monitoring Officer and will in due course be the subject of report to the Audit Committee. Work is planned to start this summer and be concluded such that formal adoption of a new scheme can be made by Council before the end of 2009.
- 3.2 Linked to the delegation scheme is a document known as the Proper Officer list. There are numerous Acts and Regulations made by of Parliament which require a council to designate one or more of its officers for particular purposes. Well known examples include the Head of Paid Service, the Chief Financial Officer and the Monitoring Officer. There are also many other designations and with new legislation being passed the list continues to grow. This document has now been revised and updated. It will need to be reviewed again in conjunction with the review of the officer delegation scheme and to reflect the new senior management arrangements once they have been fully implemented.

4.0 Programme of review of other sections of constitution

- 4.1 In addition to the officer delegation scheme other sections of the constitution require review and update as follows:

Contract Procedure Rules (part 4, section H). The review is nearing completion and is anticipated to be the subject of report to the Audit Committee in June 2009.

Financial Procedure Rules (part 4, section G). It is anticipated that these will be the subject of a review in the course of 2009/10.

Procedure Rules for Press and Public Relations (part 4, section K). It is considered that these rules need to be reviewed and updated so as to take account of the national Code of recommended Practice on Local Authority Publicity (published by the Secretary of State under the provisions of the Local Government Act 1986. Members will recall that their attention was recently drawn to this code in guidance issued by the Returning Officer in the run up to the June elections. The Government are presently reviewing the Code and it is

therefore proposed to delay work on this until the outcome of that review is known.

Procedures for handling complaints against councillors (part 5, section F). This section requires amending in the light of the recent changes in the way Standards Committee's are required to deal with complaints. It is expected that a report will be made to the Standards Committee in due course.

Probity in Planning – Local Code of Practice (part 5, section D). The code requires revision to take account of the recent changes in the Members' Code of Conduct and Standards regime. The Monitoring Officer is currently working on this in liaison with the Planning Manager, however this work is not expected to be complete in time to allow any changes to be noted or approved as necessary as part of this report.

Change in executive arrangements. Under provisions of the Local Government and Public Involvement in Health Act 2007, the Council will be obliged to review the nature of its political management arrangements in advance of the May 2011 elections and have formally adopted one of the revised versions of "executive arrangements". In practical terms this will probably amount to little more than acknowledging that the Council's Leader is elected for a 4-year term instead of being appointed each year at Annual Council. One of the significant changes is that all the Council's executive powers are to be vested in the Office of Leader. The Leader then decides the delegation arrangements to other Cabinet members (either individually or collectively as a Cabinet) and to Officers. A formal process will need to be gone through and numerous word changes made to the Constitution. The County Council have recently gone through a similar process in advance of the coming county elections. This work is planned to be undertaken in 2010.

5.0 Consultations

- 5.1 No consultations were deemed necessary in respect of the preparation of this report.

6.0 Implications/risk assessment

- 6.1 Maintaining an up to date copy of the Constitution and carrying out reviews on a periodic basis are important elements in ensuring the Council's meets the required standards for its corporate governance arrangements.

Background papers (used in writing this report):

None.

(dr/P:council/09.05.06ord/Constitution)

Eastbourne Borough Council Constitution

Schedule of recommended amendments:

Part:	Document:	Suggested change:	Reason for change:
Part 2, Article 16	Articles: Suspension, interpretation and publication of constitution	At para 16.03. Add duty to maintain a copy of the Constitution on the Council's website. Amend duty to supply members with a printed copy to one drawing their attention to website copy.	To reflect widespread use of website for access to key council documents and for reasons of economy. A printed copy will continue to be maintained in the Members' Room and key sections will be provided in printed format to new members.
Part 3, Responsibility for Functions	Section B, Full Council and its Committees	Add to the terms of reference of the General Licensing Committee responsibility to give advice and make recommendations to Cabinet in respect of licensing matters where an "Executive" decision is required to be made by the Cabinet. In effect the Committee will, for these functions, be acting as an advisory body to the Cabinet.	This is in accordance with legal advice given to the Council and the regulations that divide the authority's functions between those which may be delegated by Cabinet and those that cannot be so delegated. It allows for General Licensing Committee members to continue to play a valuable role in developing licensing policy in consultation with licence holders and users of services.
Part 3, Responsibility for Functions	Section B, Full Council and its Committees	Para. 13, Recruitment Panels (Ad Hoc). (1) To record the now established practice for the panel to have an inner or "sub-panel" of approx 4 members who deal with the short-listing and interviewing stages. The full panel agrees the employment package and overall arrangements for the recruitment and makes the	To ensure that the recruitment and selection procedures are manageable and effective and reflect current practice.

		<p>appointment (or in the case of the Head of Paid Service, recommends an appointment to the full Council).</p> <p>(2) Greater flexibility is proposed in the number of members that will sit on a panel. At present the constitution says 6 or 7. It is proposed that this be varied to specify at least 6 members. Discretion will therefore exist to have a greater number if desired. In the case of the sub-panel the number will be at least 3 members.</p>	
Part 3, Responsibility for Functions	Section C, Cabinet	At (j) (ii), add text to indicate that if the officer does not exercise their delegated power the matter will need to go the Cabinet for decision.	To clarify arrangements.
Part 4 Procedure Rules	Section D, Cabinet Procedure Rules	At para.2 (Cabinet meetings) add that the principles of Article 13 (decision making) shall apply to meetings of the Cabinet.	To clarify arrangements.
Part 4 Procedure Rules	Section D, Cabinet Procedure Rules	At para.2 (Cabinet meetings) add that all meetings of the Cabinet shall be open to the public, press and all members of the Council, subject to the need to consider any exempt or confidential business in private session. Exempt or confidential business will be dealt with at the conclusion of the public session.	To acknowledge and record current practice.
Part 4 Procedure Rules	Section D, Cabinet Procedure Rules	At para.3 (Presiding at meetings) add that in absence of both Leader and Deputy Leader then a person appointed to do so by those present shall preside.	To clarify arrangements.

Part 4 Procedure Rules	Section D, Cabinet Procedure Rules	At para.4 (Business to be conducted) add that the Leader shall report the appointment of members to the Cabinet and their responsibilities at the first meeting in the Council year and otherwise when changes are made.	To acknowledge and record current practice.
Part 4 Procedure Rules	Section D, Cabinet Procedure Rules	At para.4.2 (Business to be conducted) add that timetabling arrangements set out in the appendix may, subject to compliance with all other provisions in these rules, be amended from time to time by the Cabinet Secretary, to reflect current practice.	To ensure that the timetabling procedures are manageable and effective.