

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Council	
MEETING/ DECISION DATE:	10 September 2015	:
TITLE:	AMENDMENTS REQUIRED TO THE CONSTITUTION	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <p>Appendix 1 - Part 3 Responsibility for Functions, Section 4 Delegation of functions to officers</p> <p>Appendix 2 - Part 3 Responsibility for Functions, Environmental Services Delegation Scheme</p> <p>Appendix 3 – Part 5 Terms of Reference, Standards Committee and Code of Conduct</p>		

1 THE ISSUE

- 1.1 This report sets out proposed amendments to the Constitution.
- 1.2 It recommends that Council consider and approve the proposed revisions.
- 1.3 These recommendations are being made as the Constitution needs to reflect the current best practice and other required amendments.

2 RECOMMENDATION

- 2.1 That the amendments to the Council's Constitution as set out in Appendix 1 and 2 to the report be approved.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 There are no financial, property or people implications directly arising from this report.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and any other relevant statutory acts or guidance.

5 THE REPORT

- 5.1 The Constitution is a single point of reference which contains the principal operating structures and procedures of the authority. It 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 local people.

5.2 What amendments are requested to be made to the Constitution?

- 5.3 Appendix 1 contains the highlighted amendment recommended to Part 3 of the Constitution section 4. It was identified in an Internal Audit Report on Resources – Property Services that the Council's Scheme of Delegations to Officers referred to Head of Property and did not reflect the appointment of a Corporate Property Officer. Council is therefore requested to agree this change to section 4.
- 5.4 Appendix 2 sets out highlighted amendments that are recommended to the Environmental Services Delegation Scheme in Part 3 of the Constitution. The new wording will ensure that all current legislation is incorporated into the delegation scheme. Previously the scheme set out the legislation in detail and this required regular updating of legislative changes to ensure it was still compliant. The proposed scheme enables automatic updating as it refers to all relevant legislation currently in force. This amendment has required a minor amendment to the Regulatory (Access) Committee Terms of Reference, which reflects the current practice.
- 5.5 Appendix 3 contains amendments to Part 5 Terms of Reference of the Standards Committee. The Constitution currently states that all requests for dispensations are delegated to the Standards Committee, which was the position under the old standards regime. Section 33 of the Localism Act 2011 sets out the requirements and circumstances when a member can apply for a dispensation in relation to a discloseable pecuniary interest ("DPI"). As the consequences of having a DPI are now more onerous and to ensure effective transaction of the council's business, the Council is requested to agree delegated authority for the Monitoring Officer to grant a dispensation in circumstances where without the dispensation:
- the number of persons prohibited by having a DPI from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business, or
 - the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.

- each member of the authority's executive would be prohibited by DPLs from participating in any particular business to be transacted by the authority's executive.

The Standards Committee should be designated as the appropriate body to consider whether granting the dispensation is in the interests of persons living in the authority's area, or that it is otherwise appropriate to grant a dispensation.

6 RATIONALE

- 6.1 Council is requested to agree the amendments to ensure that the Constitution is legally compliant and up to date with best practice. The amendments will also ensure transparency, and openness of decision making and facilitate the efficient administration of the Council's functions. An updated Constitution will ensure the Council is less likely to be challenged on its procedures and processes.

7 OTHER OPTIONS CONSIDERED

- 7.1 If the Constitution is not amended, it will not be up to date or reflect the correct legal position and therefore open to challenge.

8 CONSULTATION

- 8.1 No consultation has taken place in relation to the amendments to the Scheme as this is not required.

9 RISK MANAGEMENT

- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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Background papers	None
Please contact the report author if you need to access this report in an alternative format	

Part 3 - Responsibility for Functions

SECTION 4 DELEGATION OF FUNCTIONS TO OFFICERS

~~HEAD OF PROPERTY~~ CORPORATE PROPERTY OFFICER

1. The acquisition, disposal and management of all interests in real property in accordance with such scheme (if any) as may be approved by the Council from time to time.
2. To enter contracts for the provision of property services with public bodies as defined by the Local Authorities (Goods and Services) Act 1970.

Part 5 Terms of Reference

REGULATORY (ACCESS) COMMITTEE

The Committee is granted delegated authority to exercise all the Council's powers and duties in respect of:

- (1) Modification Orders, Reclassification Orders and Public Path Orders where the matters are contentious
- (2) Commons Registration (including Town and Village Greens)

****Note 1*** – *The Service Manager: Highways and Team Leader: Highways and Drainage have been delegated general as well as specific responsibility in respect of these functions.*

****Note 2*** – *The Committee's delegated authority is framed in such a way that it will be able, if appropriate, to deal with matters other than strict "quasi-judicial" functions relating to Public Rights of Way. This would, however, be within the overall policy framework set by the Council.*

Part 3 - Responsibility for Functions

ENVIRONMENTAL SERVICES. PLACE DIRECTORATE

DELEGATIONS TO OFFICERS

1. Introduction

- 1.1 For the purposes of this scheme of delegation the officers to whom delegations are made as follows:

Chief Executive and Statutory Officers

Strategic Director of Place

Divisional Director Environmental Services, Group Managers and Team Managers and other officers in the following divisions;

Highways and Traffic

Neighbourhood Environmental Services

Planning Policy and Transport

Public Protection and Health Improvement Service

Transport and Parking

- 1.2 The delegations set out below apply to those functions which have not, by virtue of the Constitution or any other instrument, been reserved to Council or Cabinet and any committees or sub-committees thereof.

- 1.3 For the avoidance of doubt any functions which are not specifically discharged by Council or delegated to Committees or Sub-Committees are delegated to Officers. If there is any doubt such power will be exercised by the Chief Executive or in her absence her Deputy or Monitoring Officer.

2. General Principles of Officer Delegations

- 2.1 Functions delegated to officers are to be exercised taking into account:

- ☐ All other parts of the Constitution (including Article 13 "Decision Making"),

Standing Orders

Budget and Policy Framework,

- ☐ The approved Budget,

Strategy and Programme

Financial Regulations

- Any instructions given by the Chief Executive,
- Any financial advice given by the Chief Financial Officer
- Any legal advice given by the Head of Legal and Democratic Services, and
- Any statutory codes of conduct or statutory guidance, and codes and protocols as may be approved by the Council and Cabinet.

2.2 Any function delegated to a specified officer may also be exercised by any officer who has been so authorised by the officer to whom the function is delegated or (save in case of the Chief Financial Officer and Head of Legal and Democratic Services) by the Chief Executive. Such authorisations shall be recorded and held by the officer making the authorisation. Officers authorised under this provision to exercise a power delegated to another officer should be either fully or generally under the supervision and control of the authorising officer who must ensure when delegating functions that the power can be exercised by that officer

2.3 Functions delegated by reference to job titles or posts which have changed will continue in force and shall be exercised by officers whose duties include or most closely correspond to the duties of the post originally referred to.

2.4 Any reference to any Act of Parliament shall be deemed to include any act, statutory instrument or regulation by which it is applied, extended, amended, consolidated or replaced.

2.5 Where any function is delegated to an officer, that officer may choose not exercise that function and may, instead, refer a matter to the Council, the Cabinet, relevant Committee or Portfolio Holder for decision as appropriate with the agreement of the appropriate Divisional Director.

2.6 For the avoidance of doubt the relevant officers and the Planning and Environmental Law Manager are authorised to;

- institute criminal proceedings, civil proceedings and other formal enforcement actions by the Authority, and
- to conduct legal proceedings instituted by the Authority and to conduct the defence of legal proceedings brought against the Authority.

2.7 Cabinet members or Committees may reserve to themselves decisions delegated to officers, by giving notice to the officer holding the delegated power or to the Chief Executive.

2.8 In the absence or the unavailability of an officer, any function delegated to that officer may be exercised by their deputy.

3. General Provisions and Limitations

3.1 Apart from those powers set out above any remaining functions which have not been, under this or any other current scheme of delegations, specifically reserved to

Council, Cabinet or any committees or sub-committees thereof are delegated to officers. For the avoidance of doubt the powers may be further delegated under written authority.

Part 5 Terms of Reference

STANDARDS COMMITTEE

(u) Granting dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to **discloseable pecuniary interests as set out in the Localism Act 2011.**

Part 3 - Responsibility for Functions

Section 4A Proper Officer Functions

LOCALISM ACT 2011

29	Establish, maintain and publish a Register of Interests.	Monitoring Officer & Head of Legal & Democratic Services
33	<p>grant a dispensation in circumstances where without the dispensation:</p> <ul style="list-style-type: none"> the number of persons prohibited by having a DPI from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business, or the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business. each member of the authority's executive would be prohibited by DPIs from participating in any particular business to be transacted by the authority's executive. 	Monitoring Officer & Head of Legal & Democratic Services