

CABINET

14 September 2011

MINOR AMENDMENTS TO THE CONSTITUTION

REPORT OF HEAD OF DEMOCRATIC SERVICES

Contact Officer: Nancy Graham Tel No: 01962 848 235
ngraham@winchester.gov.uk

RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

This report proposes a minor change to Part 3a of the Constitution (Responsibility for Functions).

It also sets out proposed minor changes to Part 3b of the Constitution (Scheme of Delegation to Officers).

Under Article 15 of the Constitution, these are amendments that require Cabinet approval. The clarification of the responsibilities of the Licensing and Regulation Committee will also require Council approval.

RECOMMENDATION:

1. That Council be recommended to approve the minor changes to Part 3a of the Council's Constitution, affecting the Licensing and Regulation Committee, as set out in paragraph 1 of the Report.
2. That the minor changes to Part 3b of the Council's Constitution be agreed as set out in paragraph 2 of the Report.

CABINET14 September 2011MINOR AMENDMENTS TO THE CONSTITUTIONREPORT OF HEAD OF DEMOCRATIC SERVICESDETAIL:

- 1 Proposed changes to Part 3 of the Constitution, Responsibility for Functions, Section 4 (The Regulatory Committees and other non-executive decision making Committees)

It is proposed that the following additional function be added to responsibilities of the Licensing and Regulation Committee:

	Function	Provision of Act or Statutory Instrument
91	To advise Council on the exercise of its powers as set out in Article 4.04 (k) of Part 2 of the Constitution (the making, amending, revoking, re-enacting or adopting byelaws, and promoting or opposing the making of local legislation or personal Bills) and to carry out any preliminary consultation connected thereto.	Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978 (x)

- 2 Proposed changes to Scheme of Delegation to Officers (Part 3 of the Constitution)
- 2.1 Following the annual review of the Scheme, the following changes are proposed to take account of recent changes in Council structures, together with other minor up-dating or drafting changes.
- 2.2 Proposed Deletions shown as crossed through and additions as bold and underlined.

Extracts from Scheme of Delegation to Officers**A. HEAD OF STRATEGIC HOUSING**

1. Operation of the Council's housings allocations scheme, including transfers (internal and external).
2. Negotiation and exercise of nomination rights.

3. Re-housing of applicants in unquestioned housing need outside the normal allocation process subject to reporting to the Cabinet (Housing) Committee every six months on the number and type of such cases housed in this manner.
4. Determination of applications under legislation dealing with homelessness.
5. Authority to decide whether homeless persons to whom the Council has a responsibility under Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002, be rehoused directly into standard Council accommodation or a hostel, or by way of preventing their homelessness, in line with the Department of Communities and Local Government's commitment to preventing homelessness.
6. **Authority to provide Disabled Facilities Grants (DFGs) in line with the Council's statutory obligations under the Housing, Grants, Construction & Regeneration Act 1996. Authority to charge a set percentage against the costs of DFGs as appropriate for costs of administration.**
7. Authority in consultation with the Head of Finance, to consider each case where a Home Improvement Grant repayment is required and to determine whether to apply any of the relaxations of the grant conditions prescribed in the Secretary of State's General Consent.
8. To establish and maintain a separate waiting list for Shared Ownership and to review annually the maximum affordable household income to access the list.
9. In respect of the provisions of Part 1 of the Housing Act 2004 (Housing Conditions), authority to issue notices and exercise all other enforcement powers in connection with the Housing Health and Safety Rating System. **Authority to produce an Enforcement policy in line with the Council's obligations.**
10. The repair, maintenance and general management of private sector properties leased or rented for housing purposes.
11. **Authority, in consultation with the Portfolio Holder for Strategic Housing and Landlord Services, to establish "Winchester Lets".**
12. **Authority in the determination of the statutory functions of the Council to carry out and apply all matters contained below, including the appointment of proper officers:**

<u>Public Health Act 1936, Part II and Part XII - Section 287</u>	<u>Prevention Of Damage by Pests Act 1949 Parts I and III</u>
<u>Caravan Sites and Control of Development Act 1960, Part XI - s.26</u>	<u>Public Health Act 1961</u>
<u>Local Government (Misc Provisions) Act 1976 Part I</u>	<u>Local Government (Misc Provisions) Act 1982 Sections 29 - 32 inclusive</u>

<u>Building Act 1984, Part IV – Sections 59 and 95</u>	<u>Local Government and Housing Act 1989, Part VII - Section 97</u>
<u>Environmental Protection Act 1990</u>	<u>Housing Act 2004 Parts I, II, III, IV, and VII</u>

13. In respect of the provisions of Part 2 of the Housing Act 2004 (Licensing of Houses in Multiple Occupation), authority to:

- (a) approve the issue of mandatory licences;
- (b) exercise associated powers regarding revocation of licences and the approval of temporary exemption notices.

14. The making of Repair Notices; Closing Orders or Demolition Orders and Notices to remedy unsatisfactory conditions in or to abate overcrowding in Houses in Multiple Occupation under Sections 189, 190, 265, 338 and 352 respectively of the Housing Act 1985 and Deferred Action Notices under Section 82 of the Housing Grants, Construction and Regeneration Act 1996, whenever it is considered expedient to do so.

15. Authority to make a reasonable charge on a person for a service of notice requiring works to a House in Multiple Occupation under Section 352 of the Housing Act 1996; to recover expenses reasonably incurred in carrying out, in default of the person on whom notice was served, works required to be carried out by a notice under: Section 189 or 190 (Repair Notice); Section 265 (Demolition Order) or Section 366 (notice to remedy unsatisfactory conditions in a House in Multiple Occupation).

H.1 HEAD OF HEALTH PROTECTION

1. To appoint inspectors under Section 19 of the Health and Safety at Work etc Act 1974 (HSW Act) and to authorise appointed inspectors to exercise any or all of the enforcement powers specified in:

Sections 20, 21, 22, 25 of the HSW Act; Any health and safety regulation; and any other statutory provisions (see schedule 1 to the HSW Act).

2. To appoint officers to carry out the statutory provisions contained in the following
 - TSE* (England) Regulations 2002.
 - Sunday Trading Act 1994
 - Environmental Protection Act 1990 Part 1
 - Pollution and Prevention Control Act 1999.
- *Transmissible Spongiform Encephalopathy

3. To appoint Proper Officer/s to carry out the statutory functions of the following:

Local Government Act 1972 Section 270 (3)

~~Public Health (Control of Diseases) Act 1984. Part 1, 2, 3, 4, 5 and 6;~~

~~Public Health (Infectious Diseases) Regulations 1988. Regulations 6, 8, 9, 10. Schedules 3 and 4;~~
~~Milk and Dairies (General) Regulations 1959. Part VII;~~
 Public Health Act 1936. Sections 84 and 85;
 Public Health Act 1961. Section 37.

~~National Assistance Act 1948 Section 47~~

~~National Assistance (Amendment) Act 1951 Section 1~~

The Health Protection (Notification) Regulations 2010

4. Acceptance of estimates for execution of works in default of, or by agreement with, owners under the provisions of the Environmental Control, Building, Public Health or Housing Acts subject to a maximum estimated cost of £20,000.
5. Authority to take all necessary action, including the service of notices in appropriate cases:-
 - (a) to deal with any matter prejudicial to health or a nuisance.
 - (b) to prevent unauthorised entry to premises which are the subject of either a Closing Order or an undertaking that they shall not be used for human habitation.
- ~~6. Authority to exercise any powers in relation to take away food shops.~~
6. Authority to take all necessary action, including the service of Notices in appropriate cases, to effect the removal of obstructions from sewers or drains or otherwise deal with defective drains.
7. Agreements with landowners for the control of pests.
8. The recognition of water sources to be marketed under the requirements of the Natural Mineral Water, Spring Water and Bottles Water Regulations 1999.
9. Authority to take all necessary action as an enforcement authority under the Health Act 2006 and regulations made there under in respect of smoking in premises, places and vehicles, including issuing fixed penalty notices, inspecting premises, and authorisation of officers.

D) HEAD OF REVENUES

- ~~1. Institute proceedings or distraint (using a bailiff) for recovery for non-payment of debt.~~
- ~~2. Refund overpayments.~~
1. To undertake any functions and make any decisions on behalf of the Billing Authority in connection with Business Improvement District (BID) proposals, up to

the stage of instructing the ballot holder (the Council's Returning Officer) to hold a ballot.

2. In consultation with the Leader, to determine whether to exercise the power of veto in relation to Business Improvement District (BID) proposals, after the ballot has been undertaken.
3. General authority to administer, bill, collect and recover revenues in respect of:
 - Council Tax
 - Business Rates (NNDR)
 - Business Improvement District (BID) levies

which shall include authority to -

 - (a) institute proceedings for recovery for non-payment.
 - (b) apply for orders of attachment of earnings or benefits or a charge on property.
 - (c) distrain (using a bailiff) for non-payment.
 - (d) apply for warrants of commitment to prison where non-payment is due to a person's "wilful refusal or culpable neglect".
 - (e) refund overpayments.
4. Determine applications for discretionary rate relief within the scheme approved by the Council; where appropriate, in consultation with the Portfolio Holder for Administration, Innovation & Improvement).
5. Determine claims for Council Tax disability **reduction** relief where properties have relevant special facilities for a disabled person.
6. Determine applications for a temporary allowance on premises partly occupied in accordance with Regulations.
7. Determine applications for reduction or remission of Business Rate (NNDR) liability on grounds of hardship in consultation with the Portfolio Holder for Administration, Innovation & Improvement .
8. Operation of the Benefits Schemes, determining applications, including backdating benefit, where appropriate.
9. Authority to make determinations on discretionary housing payments.
10. Institute **recovery** proceedings or ~~distrain (using a bailiff) for recovery for non-payment~~ **of housing benefit overpayment** ~~debt~~.

F.4 HEAD OF HISTORIC ENVIRONMENT

- ~~1. Authority to make Historic Building Grants up to £5,000 on any item within the terms of the Historic Building Grants Scheme.~~
1. Authority to approve the service of Urgent Works Notices.

2. Authority to issue a Section 215 Notice to require proper maintenance of land.

OTHER CONSIDERATIONS:

3 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS
(RELEVANCE TO):

- 3.1 Relevant to the strategic priority of being an efficient and effective Council.

4 RESOURCE IMPLICATIONS:

- 4.1 Work on updating the Constitution is undertaken within existing resources.

5 RISK MANAGEMENT ISSUES

- 5.1 None directly for Winchester City Council.

6 BACKGROUND DOCUMENTS:

None

7 APPENDICES:

None.