

CABINET

13 April 2005

MINOR AMENDMENTS TO THE CONSTITUTION

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Nancy Howarth Tel No: 01962 848 235 nhowarth@winchester.gov.uk

RECENT REFERENCES:

CAB1221 - Amendments to the Constitution – Revised Descriptions of Exempt Information Under the Local Government Act 1972 – 1 March 2006

EXECUTIVE SUMMARY:

This report proposes some minor amendments to the Constitution, which are set out in the Appendices.

The changes are a result of a general ‘tidying’ exercise undertaken to ensure the Constitution includes all changes arising from legislation as set out in Government Statutory Instruments etc. It also makes consequential adjustments to take account of changes that have already been approved in other parts of the Constitution.

RECOMMENDATION:

That it be recommended to Council:

1. That the minor amendments to Part 3 - Responsibility for Functions (Section 6 – The Scheme of Delegation to Officers) of the Constitution as set out in Appendix 1 to this report be approved.
2. That the minor amendments to Part 3 – Responsibility for Functions (Section 4 - The Regulatory Committees and other non-executive decision making Committees) of the Constitution as set out in Appendix 2 to this report be approved.

OTHER CONSIDERATIONS:

1 CORPORATE STRATEGY (RELEVANCE TO):

- 1.1 Modernising our Working Practices.

2 RESOURCE IMPLICATIONS:

2.1 None.

BACKGROUND DOCUMENTS:

None

APPENDICES:

Appendix 1 – Minor Amendments to Part 3, Section 3 of the Constitution (Scheme of Delegation to Officers)

Appendix 2 – Minor amendments to Part 3, Section 4 of the Constitution (The Regulatory and other non-executive decision making Committees)

PROPOSED MINOR AMENDMENTS TO THE CONSTITUTION

1. Part 3 - Responsibility for Functions (Section 6 – The Scheme of Delegation to Officers)

1.1. Changes to City Secretary and Solicitor

- (i) Delete delegations 30 and 31 (relating to public entertainment charges for major outdoor events) – no longer in force since implementation of the Licensing Act 2003.
- (ii) Include the following additional delegations to the City Secretary and Solicitor's powers:
 - “To determine applications in accordance with the Gambling Act 2005”.
 - “In consultation with the Portfolio Holder for Finance and Resources, authority to update the Council’s policy guidelines upon the Regulation of Investigatory Powers Act 2000 (RIPA)” (Note: Extra delegation to tie in with RIPA Report (CAB1260) elsewhere on the agenda).

1.2. Changes to Director of Communities, Environmental Health Matters

Under the delegations to the Director of Communities, Section B (Environmental Health Matters), Paragraph 3 should be replaced with the following (additional wording shown in italics):

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

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”

1.3. Changes to Director of Development, Planning Matters

That the following additional delegation be added to the Director of Development’s powers under the sub-heading ‘Planning Matters’:

- “20. Authority to divert a public footpath pursuant to Section 257 of the Town and Country Planning Act 1990.”

1.4. Reordering of Scheme of Delegation to Officers

The Scheme of Delegation to Officers to be re-ordered to better reflect the new Council divisions within Directorates and that the City Secretary and Solicitor be given delegated authority to make the appropriate changes.

Section 4 - The Regulatory Committee And Other Non-Executive Decision Making Committees

1.1. Planning Development Control Committee

It is recommended that the following amendments and additional delegations be agreed (shown in tracking):

14. Power to serve a planning contravention notice, breach of condition notice, temporary stop notice or stop notice.	Sections 171C, 171E, 187A and 183(1) of the Town and Country Planning Act 1990.
29. Power to create footpath or bridleway by agreement.	Section 25 of the Highways Act 1980 (c. 66).
30. Power to create footpaths and bridleways.	Section 26 of the Highways Act 1980.
31. Power to stop up footpaths and bridleways.	Section 118 of the Highways Act 1980.
32. Power to determine application for public path extinguishment order.	Sections 118ZA and 118C(2) of the Highways Act 1980.
33. Power to make a rail crossing extinguishment order.	Section 118A of the Highways Act 1980.
34. Power to divert footpaths and bridleways.	Section 119 of the Highways Act 1980.
35. Power to make a public path diversion order.	Sections 119ZA and 119C(4) of the Highways Act 1980.
36. Power to make a rail crossing diversion order.	Section 119A of the Highways Act 1980.
37. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	Section 121B of the Highways Act 1980.
38. Power to decline to determine certain applications.	Section 121C of the Highways Act 1980.
39. Protection of public rights - highways	Section 130 of the Highways Act 1980
40. Power to extinguish certain public rights of way.	Section 32 of the Acquisition of Land Act 1981 (c. 67).
41. Power to authorise stopping or diversion of highway.	Section 247 of the Town and Country Planning Act 1990.
42. Power to authorise stopping-up or diversion of footpath or bridleway.	Section 257 of the Town and Country Planning Act 1990.
43. Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.

44. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997 No.1160)
45. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 (S.I. 1999 No.1892)

1.2. Licensing and Regulation Committee

1.2.1 It is recommended that the following amendments and additional delegations be agreed (shown in tracking):

73. Power to make, amend, revoke or re-enact, or enforce (change) byelaws.	Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978 (c.30)(x).
76. The exercise of the Council's functions under the Licensing Act 2003.	Section 5 to 8 Licensing Act 2003.
<u>77. The exercise of the Council's functions under the Gambling Act 2005.</u>	<u>Gambling Act 2005.</u>
<u>78. Power to resolve not to issue a casino premises licence.</u>	<u>Gambling Act 2005</u>
<u>79. Power to grant permission for provision, etc of services, amenities, recreation and refreshment facilities on the highway and related powers.</u>	<u>Section 115E, 115F, 115K of the Highways Act 1980.</u>
<u>80. Duty to publish notice in respect of proposal to grant permission under Section 115E of the Highways Act 1980.</u>	<u>Section 115G of the Highways Act 1980.</u>

1.2.2 It is recommended that the following delegations be deleted as they have been replaced by the Licensing Act 2003:

9.	Power to issue cinema and cinema club licences.	Section 1 of the Cinema Act 1985 (c.13).
10.	Power to issue theatre licences.	Sections 12 to 14 of the Theatres Act 1968 (c.54)(d).
11.	Power to issue entertainment licences	Section 12 of the Children and Young Persons Act 1933 (c.12), Section 79 of the Licensing Act 1964 (c.26), Sections 1 to 5 and 7 of, and Parts I and II of the Schedule to the Private Places of Entertainment (Licensing) Act 1967 (c.19) and Part I of, and Schedules 1 and 2 to the Local Government (Miscellaneous Provisions) Act 1982 (c.30).

1.3. Statement of Accounts Committee

It is recommended that the terms of references be amended as shown below (changes tracked):

“To consider and approve the Council’s Annual Statement of Accounts, income and expenditure and balance sheet in accordance with the Accounts and Audit Regulations 1996 as amended or re-enacted from time to time.