

# Arun District Council

<b>REPORT TO:</b>	<b>REPORT OF CONSTITUTION WORKING PARTY TO FULL COUNCIL ON 11 MAY 2022</b>
<b>SUBJECT:</b>	<b>CONTINUING THE TRANSITION TO THE COMMITTEE SYSTEM – AMENDMENTS TO THE CONSTITUTION</b>
<b>LEAD OFFICER:</b>	<b>SOLOMON AGUTU</b> <b>INTERIM GROUP HEAD OF LAW AND GOVERNANCE &amp; MONITORING OFFICER</b>
<b>LEAD MEMBER:</b>	<b>CLLR RICKY BOWER – CHAIR OF THE CONSTITUTION WORKING PARTY</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION:</b>  Article 1 Paragraph 3 of the Constitution sets out the purposes of the Constitution. These recommendations are intended to implement this paragraph more accurately and more particularly to enable decisions to be taken efficiently and effectively.	

## 1. PURPOSE OF REPORT

- 1.1. This report contains recent recommendations from the Constitution Working Party (CWP) on continuing amendments to the Constitution designed to smooth the transition from Cabinet to a Committee system of Governance.
- 1.2. This report also brings to Full Council amendments recommended by the Planning Committee and accepted by CWP relating to Site Visits – the minutes from that meeting of the Constitution Working Party held on 7 February 2022 are attached as an Appendix.
- 1.3. This report draws Council’s attention to consequential changes to be made by the Monitoring Officer under delegated powers as a result of organisational and legislative changes (e.g., Part 4, Section 1, para 7.2 references to *Public Health England* should be changed to *UK Health Security Agency*), and change of titles, eg Group “Head of Law and Governance & Monitoring Officer” instead of “Head of Council Advice & Monitoring Officer” and legacy changes which were previously missed but are consequences of decisions made by Full Council to move to a committee system

## 2. RECOMMENDATIONS

- 2.1. That Full Council accepts the amendment to the Articles (Part 2 article 14.2 of the constitution), (changes to the constitution) – see Annexe 1 and also Appendix 1.

- 2.2. That Full Council accepts the amendment to the Articles (Part 2 of the constitution Article 1.0 of the constitution) to insert the following sentence after the first sentence “ *no person shall be eligible for nomination as chair or vice chair for as long as they hold a position of responsibility as Leader or deputy leader within a political group*” (Appendix 1).
- 2.3. That Full Council accepts the amendment to Part 3 of the Constitution (Responsibility for Functions) to include a requirement that each service committee is to appoint an Urgency Sub-Committee composed of the Chair, Vice-Chair and one other Member of the Committee.
- 2.4. That Full Council accepts amendments to the Committee Procedure Rules (Part 5 Section 2 Paragraph 8.1) to reduce the default length of meetings to three hours (from four and a half hours).
- 2.5. That Full Council (with the exception of the Council Tax meeting) accepts amendments to the Council Procedure Rules (Part 5 Section 1 Paragraph 17.5) and Committee Procedure Rules (Part 5 Section 2 Paragraph 13.3) to reduce the length of speeches for ordinary council and ordinary committee meetings from 5 minutes to three 3 minutes.
- 2.6. That Full Council accepts amendments to Part 5 Section 1 Paragraph 12 to make provision for valid Public Questions which in the opinion of the Monitoring Officer relate to the terms of reference of a Council committee to be accepted at Full Council and be automatically referred by Full Council without discussion or debate to the relevant committee.
- 2.7. Full Council accepts the amendment to Part 4 Section 1 (Chief Executive and Directors) and deletion of Part 4 Section 2 (Chief Executive and Directors) and Part 4 Section 3 (Group Heads). This means that Part 4 Sections 2 and 3 are removed from this part of the constitution and placed in Part 7 (Management Structure). (See appendix 2) The matters reserved scheme will not be continued in its present form.
- 2.8. Accept the changes to Part 6, Section 4 - Purchasing Procurement Contract rules (appendix 4)
- 2.9. Accept the changes to Part 6, Section 3 - Financial Procedures (appendix 3)
- 2.10. Recommend to Council the changes to Part 8, Section 3 - Planning Protocol agreed by the Planning Committee on 2 February 2022 and agreed by CWP on 7 February 2022 relating to site visits.
- 2.11. Full Council accepts amendments to Part 9 Section 5 (Filming and Photographic Protocol) to clarify that the protocol applies to Councillors as it applies to Members of the Public and allows councillors to record and film during meetings.
- 2.12. Note the consequential amendments as a result of organisational and legislative changes.

2.13. That CWP reports back to Full Council on the postponed consideration of

- Part 3 (Responsibility for functions) including proposals for the reduction in the number of committees and the reduction in the number of Full Council and committee meetings.
- Referral and Recovery procedures
- Amendment to the Petition scheme to clearly exclude planning and licensing related matters and to clarify that the Petition Scheme only applies to matters within the powers of the District Council
- Quorum and voting at hybrid meetings
- Making provision for electronic voting (when the electronic voting system has been installed) and to clarify all voting procedures

### **3. EXECUTIVE SUMMARY**

- 3.1. The main recommended changes to the constitution are based on the central idea that members make strategic decisions and officers make operational decisions (members are to steer; officers are to row). The changes involve rebalancing the Officer Scheme of Delegation balanced by increased officer accountability that requires committee agendas to include items for scrutiny, policy development items, performance management items, as well as decision making reports.
- 3.2. The secondary recommended changes come from rolling review of the constitution to include removal of legacy cabinet provisions and to implement suggestions from the Planning Committee accepted by CWP.
- 3.3. Tertiary recommended changes are changes required by organisational changes and legislative changes.

### **4. DETAIL**

- 4.1. In May 2021, Arun District Council migrated from a Cabinet system to a Committee system by making changes to the executive model constitution. The committee system has now been in operation for 8 months. It has now become clear that the migration to the Committee system requires more than just a change to the text of the constitutional document. It also requires a mind shift in order to effectively operate the Committee system.
- 4.2. With the assistance of external consultants, officers undertook a review of the new committee style constitution to:
- identify legacy provisions which still reflect the Executive system of governance and to suggest how to remove/amend them
  - identify new provisions not in the constitution which will help support the mental transition to committee governance

- note the specific provisions already identified as requiring attention as they are neither effective efficient or economic in the context of a committee system.
- 4.3. The Interim Group Head of Law and Governance & Monitoring Officer is now able to make recommendations following consideration of the report from Kirsty Cole and Cllr Roger Blaney (Joint Consultants). Not every recommendation by the joint consultants has been accepted as the Interim Group Head of Law and Governance has also had regard to the views of the Council's Corporate Management Team, Senior Management Team and Councillors.
- 4.4. It is generally accepted that the transition to a committee system needs to be completed by a culture change. A culture change can come about partly by acceptance of change to structures and procedures – but mostly a change of mindset is also required on the part of officers and members.

## **5. CONSULTATION AND FEEDBACK FROM CWP**

- 5.1. Following discussion with committee chairs a presentation to which all members were invited took place on 14 March 2022 with Kirsty Cole and Roger Blaney.
- 5.2. Discussion with officers took place on 10 March 2002 and discussion with CMT took place on 5 April 2002 and has been continuing since.
- 5.3. Officers took a report to CWP on 11 April 2022 based on the consultant's report. The main recommendations to CWP were built on the central idea that members make strategic decisions and officers make operational decisions (members are to steer; officers are to row). CWP was asked to agree a set of principles namely:
- The principle of an overarching Policy and Finance Committee
  - reducing the number of committees, and
  - reducing the number of committee meetings.
  - rebalancing the Officer Scheme of Delegation balanced by increased officer accountability that requires committee agendas to include items for scrutiny, policy development items, performance management items, as well as decision making reports.
- 5.4. CWP noted the principle of reducing the number of committees and principle of reducing the number of full council and committee meetings but felt that it was premature to discuss the proposals arising from these two principles. CWP noted that the Policy and Finance Committee already operates as a co-ordinating rather than an overarching committee. The discussion on reducing the number of meetings and reducing the number of committees was rolled forward to the next meeting of CWP and so there are no recommendations relating to this at this meeting.

- 5.5. CWP discussed the principle of delegation to the Chief Executive. The interim Monitoring Officer explained that the Scheme of delegation should be a delegation to the Chief Executive who would then authorise officers using a “scheme of authorisation”. Therefore, the key decision for Members was how much is being delegated to the chief executive generally and specifically in terms of financial decision making. It was recommended that in urgent circumstances the Chief Executive should be able to spend up to £1m without reference to committee. In principle the delegation to other officers should not be made by Members but by the Chief Executive. Thus, in a committee system, Parts 4 of the constitution only requires an adapted Section 1. Sections 2, 3 and 4 are not required. Following discussion CWP did not agree a £1m financial delegation to the Chief Executive in cases of urgency but agreed £500,000 instead.
- 5.6. In terms of member request for more scrutiny and performance management by committees the Interim Monitoring Officer explained that It was expected that Lead officers would develop committee work programmes which included decision making items, policy development items, and scrutiny items. Officers would make decisions in accordance with policies adopted by Members and so it is expected that officers will bring forward strategic policies for Member approval. In discussion about procurement and financial regulations examples were given of the policies which will be brought forward such as Debt Management and write offs, Virement, Procurement policy and a Property Acquisition and Disposal Policy
- 5.7. Officers recommended the reinstalment of the six-month recission policy, but CWP did not agree to that recommendation and therefore there is no proposal about reinstating this provision before this meeting.
- 5.8. A number of procedural amendments were discussed by CWP. These are set out in the annexes.
- 5.9. A number of technical and consequential amendments were notified to CWP where the law or organisational changes required the amendments. These will be actioned by the Monitoring Officer

## **6. FINANCIAL CONSIDERATIONS**

- 6.1. The amendments recommended to this meeting have neutral financial considerations.

## **7. RISK MANAGEMENT CONSIDERATIONS**

- 7.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is the Council’s risk appetite.

- 7.2. Changes in the Council's Vision, objectives, and upcoming projects create an opportunity to review the Council's Risk Management Strategy and supporting risk management processes. Operating at Strategic level allows members to define the risk appetite of the Council and what this means in terms of decision making.
- 7.3. Risk appetite is the level of risk that the Council is prepared to tolerate or accept in pursuit of its objectives whilst recognising the potential benefits that might result from a higher degree of risk taking.
- 7.4. Accepting these recommendations represent a very low risk to compliance and regulatory requirements and low financial risk. Not accepting these recommendations represent a high risk to the reputation of the Council, a high risk to the transformational change that the Council is embarked upon.

## **8. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER**

- 8.1. Article 14 of the Constitution makes provision for changes to the constitution. In legal terms the current paragraph 2.0(i) and (ii) are irrelevant and a source of confusion and are to be deleted.
- 8.2. The current paragraph 2.0 (iii) delegates authority to the Monitoring Officer to make consequential changes to the constitution. One change in particular relates to provisions in the constitution which wrongly empower the Chief Executive to make decisions which should be made by the Monitoring Officer as this is the Officer charged with maintaining the constitution and advising on lawfulness under Article 11. The substitution of the Chief Executive with the MO in Article 14 paragraph 2.0 (iv) is a case in point.
- 8.3. Part 4 (Officer Scheme of Delegation) is anomalous in a committee governance system. Under provisions of the Local Government and Housing Act 1989 (and regulations made under it), the Head of Paid service is responsible for the management of staff. That includes making decisions about the authority of staff reporting to the Head of Paid Service to make decisions. Part 4 of the constitution is anomalous to the extent that it suggests that Council is responsible for deciding on the delegation to Officers below the Head of Paid Service (who are not the Monitoring Officer or the Section 151 Officer). Recommendation 2.4 is designed to correct this anomaly. This recommendation primarily relates to clarifying the delegation to the Chief Executive and uncoupling the Full Council's delegation to the Chief Executive from the delegations to other officers. This means that Part 4 Sections 2 and 3 are removed from this part of the constitution and placed in Part 7 (Management Structure) becoming an internal officer management document and not a constitutional document.
- 8.4. Specific legal advice will be provided as necessary as each recommendation is considered.

## **9. HUMAN RESOURCES IMPACT**

9.1. None for the purposes of this report..

## **10. HEALTH & SAFETY IMPACT**

10.1. Generally, the rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is Health and Safety Impact of decisions. This new style report writing framework together with the expected member focus on strategic issues embedded in the changes to the constitution will give members a better understanding of this impact

10.2. The Council is committed to doing all that is reasonably practicable to protect the health, safety and welfare of employees and members through applying the high standards set out within the Council's health and safety policy.

## **11. PROPERTY & ESTATES IMPACT**

11.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is the impact of decisions on Property and Estates. This new style report writing framework together with the expected member focus on strategic issues embedded in the changes to the constitution will give members a better understanding of this impact.

## **12. EQUALITIES IMPACT ASSESSMENT (EIA)**

12.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is equalities and diversity. This new style report writing framework together with the expected member focus on strategic issues embedded in the changes to the constitution will give members a better understanding of this impact.

## **13. CLIMATE CHANGE & ENVIRONMENTAL IMPACT**

13.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is climate change and environmental impact. This new style report writing framework together with the expected member focus on strategic issues embedded in the changes to the constitution will give members a better way of monitoring how the climate change strategy is being implemented.

## **14. CRIME AND DISORDER REDUCTION IMPACT**

- 14.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is Crime and Disorder Reduction Impact. This new style report writing framework together with the expected member focus on strategic issues embedded in the changes to the constitution will give members a better understanding of this impact.
- 14.2. It is expected that all reports to committee will allow members to address the crime and disorder implications of all the strategic decisions by ensuring that each committee work programme considers the Arun Safer Community Partnership strategy as it affects their terms of reference.

## **15. HUMAN RIGHTS IMPACT**

- 15.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is Human Rights.

## **16. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS**

- 16.1. The rebalancing of member and officer roles requires that officers become accountable to members on key matters of strategic impact. One of these matters is Freedom of Information and Data Protection Impact Assessments.

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### **CONTACT OFFICER:**

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**ANNEXE 1-** Article 14 and

**ANNEXE 2-** summary changes to Procurement and Financial Regulations

### **APPENDICES**

**Appendix 1 – Amended Part 2 (Articles)**

**Appendix 2 – Amended Part 4 (Officer Scheme of Delegation)**

**Appendix 3 – Amended Part 6 (Financial Rules)**

**Appendix 4 - Amended Part 6 (Procurement Rules)**

**Appendix 5 - Amended Site Visit protocol**



## **ANNEXE 1 – Article 14**

The main change to the articles is to articles 1 and 14.

The proposals for the amendment to Article 1 is based on the long-standing custom and practice that a person who holds a position of responsibility within their local political group should not be eligible for nomination as Chair or vice chair of the Council.

The proceedings of Full Council in September 2021 drew attention to the lack of clarity of the mechanics of how Article 14 operates. Recommendation 2.1 is to clarify the operation of Articles 14.

### **ARTICLE 14 – REVIEW AND REVISION OF THE CONSTITUTION**

#### **1.0 DUTY TO MONITOR AND REVIEW THE CONSTITUTION**

The Constitution Working Party will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. **Subject to paragraph 2.0 below amendments to the Constitution will only be made on the recommendation of the Constitution Working Party**

#### **2.0 CHANGES TO THE CONSTITUTION**

The Full Council has delegated authority to:

- ~~(i) the Planning Committee to approve changes to the Scheme of Delegation for development control services which are the responsibility of the Director of Place and Group Head of Planning;~~
- ~~(ii) the Licensing Committee to approve changes to the Scheme of Delegation for environmental and licensing services which are the responsibility of the Director of Place and Group Head of Technical Services;~~
- (iii) the Monitoring Officer to make consequential changes as a result of the modification or re-enactment of legislation or express changes consequential to an agreed decision of Full Council; and
- (iv) the Monitoring Officer, in **written** consultation with the chair of the Constitution Working Party **at least three days before relevant Full Council meeting**, to **propose that** for any other reason the proposed change be put direct to Full Council for consideration and decision.

## **ANNEXE 2**

Amend the Financial Regulations and require the adoption of policies on (a) Debt Management and write offs (b) Virement (c) External grants

Amend the Procurement Rules and Contract Standing Order and require the adoption of a Procurement Policy to guide and steer officer decision making (a ) Adopt disposals and acquisitions policy on commercial property and (b) disposals policy on stores and equipment surplus to requirements

### **Why?**

to transfer previous ICMs to officers being part of cabinet legacy but to require officers to carry out these functions within a policy context prescribed by Members. Where it is not desirable to transfer previous ICM's to officers, to create urgency sub committees with chair vice chair and opposition lead.

### **Procurement Rules Part 6 Section 4**

Glossary added to and deleted reference to EU and ICMs

Banding changed by removing middle bands

Under 10k – delegated to officers

~~£10k to £50k~~

~~£50K to £189k~~

Up to £189k – delegated to officers

Over £189k – reserved to committee

Technical and organisational changes

Requires the adoption of an asset disposal policy

### **Finance Regulations - Part 6 Section 3**

Technical and organisational changes

Scheme of Virement to be approved by Members

Virements over £500,000 to be agreed by Members

Asset Disposal Policy to be agreed by Members

Debt Management and Write Off Policy to be agreed by Finance and Policy Committee

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