

ARUN DISTRICT COUNCIL

REPORT TO CONSTITUTION WORKING PARTY ON 17 AUGUST 2020

SUBJECT:	Draft 2021 Constitution – Parts 1 to 5
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DATE:	August 2020
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EXECUTIVE SUMMARY:

The Council resolved on 15 January 2020 to cease operating a Leader with Cabinet form of governance and to move to a Committee system form of governance with effect from 19 May 2021. This decision requires a major review of the Council's Constitution and the Constitution Working Party has been tasked with undertaking this work, with the aim of completing this review by January 2021.

Having taken account of issues already discussed by the Working Party and the Council, this report presents the first half of the new 2021 Constitution for review covering:

- Part 1 – Summary and Explanation
- Part 2 – Articles of the Constitution
- Part 3 – Responsibility for Functions
- Part 4 – Officer Scheme of Delegation
- Part 5 – Meeting Procedure Rules

The Working Party is asked to recommend these revisions to the Full Council on 16 September 2020 to be incorporated into a new 2021 Constitution.

RECOMMENDATIONS:

It is recommended to the Full Council that:

- (1) The proposed revisions to be incorporated into the new 2021 Constitution at Part 1 [Summary and Explanation] as set out at Appendix 1, as attached to the minutes, be approved;
- (2) The proposed revisions to be incorporated into the new 2021 Constitution at Part 2 [Articles of the Constitution] as set out at Appendix 2, as attached to the minutes, be approved;
- (3) The proposed revisions to be incorporated into the new 2021 Constitution at Part 3 [Responsibility for Functions] as set out at Appendix 3, as attached to the minutes, be approved;
- (4) The proposed revisions to be incorporated into the new 2021 Constitution at Part 4 [Officer Scheme of Delegation] as set out at Appendix 4, as attached to the minutes, be approved;

- (5) The proposed revisions to be incorporated into the new 2021 Constitution at Part 5 [Meeting Procedure Rules] as set out at Appendix 5, as attached to the minutes, be approved; and
- (6) To comply with the binding decision already taken by the Council to change its form of governance, these revisions to take effect from the Annual Council Meeting on 19 May 2021.

1.0 BACKGROUND

- 1.1 The Council made a binding resolution on 15 January 2020 (Minute 388 refers) in accordance with the provisions of Section 9K of the Local Government Act 2000 (as amended by the Localism Act 2011) to change its governance arrangements. The Council resolved to cease operating a Leader and Cabinet form of governance and to change to a Committee system form of governance effective from the Annual Council Meeting on 19 May 2021. This Working Party was convened to work through the necessary changes to the Council's Constitution and report back to the Full Council, with the aim of this work being concluded by January 2021.
- 1.2 The Working Party agreed with officers that the models used by Basildon, Fylde, Maidstone, Newark & Sherwood and Richmond councils, who were already operating a Committee system, would be used as the basis for informing the review. The Working Party also identified a number of specific issues to be considered in redrafting a new Constitution.
- 1.3 To inform this review, the Working Party considered at its last meeting on 29 June 2020:
- the final role and remit of each of the six service committees and the four regulatory committees;
 - the size of committees;
 - arrangements for membership and the appointment of the Chairman and Vice-Chairman if they were to differ to current Procedure Rules; and
 - the frequency of meetings.

The Working Party's recommendations on these four issues were approved by the Full Council on 15 July 2020.

- 1.4 The review has ensured that the redrafted Constitution meets all the legislative requirements of a Committee system form of governance and deletes any references to the current Leader and Cabinet arrangements. A key element has been identifying the implications of removing the Individual Cabinet Member responsibilities with there being no statutory power to delegate any decision making to an individual Councillor under a Committee system, as was confirmed to Members during the governance review process.
- 1.5 To meet the deadline set by the Council, it is anticipated that the remaining half of the Constitution will be reported to a further meeting of the Working Party in October.

2.0 PROPOSALS

- 2.1 The proposed revisions to Parts 1 to 5 are attached as appendices to this report. Parts 1, 2, 4 and 5 show the revisions to be made as tracked changes to the existing Constitution, so that Members can follow the audit trail of what is being suggested. Part 3 which covers the remit of the new Committee system has had to be created as a new document. However,

to provide an audit trail, commentary has been provided throughout to reference what is being suggested. Issues to flag with the Working Party are:

2.2 **Part 1 (Summary and Explanation)** – No specific issues were raised by Members on this part of the Constitution. The redraft reflects legislative requirements and best practice identified from other councils reviewed.

2.3 **Part 2 (Articles)** – This does reflect the following issues raised by the Working Party and again best practice identified from the other councils.

Specific issues to cover in review	Update
Role of the Leader of the Council	New Article 6
Moving the list of Functions of the Full Council into Part 3 (as Basildon model)	New Part 3, Section 2

2.4 **Part 3 (Responsibility for Functions)** – As referred to earlier, this part of the Constitution needed to be completely redrafted to reflect a Committee system form of governance. The redraft takes account of existing functions currently covered by the Cabinet or Individual Cabinet Member that it is felt need to be listed as a specific function under the relevant Service Committee. All other functions would be covered under the general purpose of the Service Committee.

References to the Overview Select Committee and the Environment & Leisure and Housing & Customer Services Working Groups have been deleted as the Council did not include any scrutiny function in the new Committee system other than how decisions may be subject to 'call in' principles at Full Council. How this process could work has been covered in Part 5, under a new Council Procedure Rule 18.

The draft proposals reflect at paragraph 5.2 that the functions allocated to the Development Control Committee may be subject to review from the outcomes of the current Planning Service review. Further, the Council acknowledged in adopting the new committee structure on 15 January 2020 that the name of the Committee was still to be reviewed; and on 15 July 2020 that the size of the membership may be subject to change as a consequence of this review.

The redraft also reflects where the officer team are proposing that a Sub-Committee or Panel should no longer continue as its remit has been incorporated into the role of a Service Committee. In addition, the redraft has taken account of the following issues raised by the Working Party:

Specific issues to cover in review	Update
Existing para 4.2 (Development Control Committee) clarifying how the Site Inspection Panel and Briefing Panel terms of reference are published in future	Suggesting these are referenced in a proposed new Planning Protocol to replace the Local Planning Code of Conduct Part 8, Section 6 of the Constitution in line with Maidstone and Newark & Sherwood models – still to be presented
Existing paras 4.3 (Licensing Committee) and 5.5 (Licensing Sub) clarifying lawfulness of current arrangements and introducing a Gambling Sub if needed	Addressed in new Section 5 & 6. A separate Gambling Sub is not required under the Committee system

Existing para 5.3 (Planning Policy Sub) decision making for Community Instructure Levy spend	Review underway and due to be reported to Planning Policy Sub-Committee by early Autumn. Any further amendments needed will be dealt with as consequential changes.
Existing para 12 (Partnerships) representation on HASC post the Council having a scrutiny function	<p>Suggesting this section is deleted in its entirety and replaced by defining which outside bodies will report to each Service Committee and any specific representation requirements – see new paragraph included in the functions of each Committee in new Section 4.</p> <p>Following consultation with West Sussex County Council (WSCC), it is likely that they will confirm that Arun can nominate a member of the relevant Service Committee to sit on the Health & Adult Social Care Select Committee (HASC) and the Sussex Police & Crime Panel. Residential and Wellbeing Services would be the relevant Committee and the appointments would be made under the arrangements for outside bodies as currently. Confirmation will be subject to WSCC agreeing changes to their Constitution to reflect that Arun no longer has a scrutiny committee.</p> <p>It is not proposed that any permanent appointment is made to the West Sussex Joint Scrutiny Steering Group in view of its variable activity. Instead it has been agreed with WSCC that Arun would be invited to nominate a member of the relevant Service Committee if and when a scrutiny review was requested by the West Sussex Councils. This Group will therefore continue to be listed on the outside body schedule with an appointment to be made by the Council as required.</p> <p>Following this confirmation, the partnerships included in para 12 have been listed against the relevant Service Committee in the new Section 4.</p> <p>A review is underway of remaining appointments made to outside bodies and the Working Party will be presented with the outcomes so these</p>

	can be added as a consequential change to this part of the Constitution.
Role and remit of each of the Service Committees	Approved by Full Council on 15.07.20 Reflected in new Section 4
Size of Committees	Approved by Full Council on 15.07.20 Reflected in new Sections 4 and 5
Arrangements for membership and appointment of Chairman and Vice-Chairman	Approved by Full Council on 15.07.20 Reflected in new Section 2
Frequency of meetings	Approved by Full Council on 15.07.20
Which of the Sub-Committees, Working Parties and Panels need to continue to operate	Addressed in new Sections 6-10

2.5 **Part 4 (Officer Scheme of Delegation)** – The proposals cover changes that need to be made to reflect the legislation that the Council will need to work to under a Committee system and to change any references to consultation – from the relevant Cabinet Member to the relevant Committee Chairman. The proposals also take account of the following issues raised by the Working Party:

Specific issues to cover in review	Update
Check non-Group Head post titles still current	Done
Update any Proper Officer powers with latest legislation	Done – review concluded by Legal Team
Section 2 (Chief Executive and Directors) including standard authorisations for Directors to step in as Acting Chief Executive in their absence	Addressed in Section 2
Section 2, para 3.18 (Director of Services) and Section 3, para 4.2 (Group Head of Residential Services) reviewing authorisations under HRA Account from change to Committee system	Done – authority remains with Director, in consultation with Committee Chairman
Section 3, para 3.1.2(i) (Group Head of Planning) reviewing ward member rights to call-in minor applications, similar to household applications	Suggesting consideration of this request is deferred to await the outcomes of the Planning Services review and the planned review by the Development Control Committee programmed for January 2021
Emergency decisions – how will this work under a Committee system?	Suggesting new urgent powers section for CEO at Part 4, Section 2, para 2.23 onwards with Directors retaining their existing emergency response delegations at Section 2, paras 3.9 and 4.8

2.6 **Part 5 (Meeting Procedure Rules)** – The reference to Cabinet Procedure Rules is deleted from this Part of the Constitution as these will no longer be applicable. It is also suggested that Section 4, Public Speaking Rules for the Development Control Committee is removed from Part 5 of the Constitution and its principles incorporated into a proposed new Planning Protocol to replace the Local Planning Code of Conduct at Part 8, Section 6 of the Constitution. This reflects the practice identified in the other Council models and will bring all procedures for the Development Control Committee into the one place in the Constitution. The new section will be presented to the Working Party at a future meeting.

Section 5, Virtual Procedure Rules has not been considered at this stage in the review as the legislation currently only provides for remote meetings until 6 May 2021. If further legislation is introduced by Government to extend these provisions or introduce hybrid meeting arrangements, then these Procedure Rules can be revisited when the position is clearer.

The revisions proposed reflect legislative requirements and best practice identified from the other councils. They also aim to address the following issues raised by the Working Party:

Specific issues to cover in review	Update
Section 1 – Council Procedure Rules	
Existing Rules 4.2 and 4.3 (Business and Procedures and Special Council Meetings) should non topic related Motions be allowed	Included in new Rule 4.2(viii)
Existing Rule 12 (Questions by Members with Pecuniary/Prejudicial Interests) against Code of Conduct requirements	Addressed in new Rule 13
Existing Rule 27 (Substitution) <ul style="list-style-type: none"> Clarifying lawfulness of allowing substitutes at Licensing Committee Reviewing the timescale for Group Leader notifications 	Addressed in new Rule 29 Full Council agreed on 22.07.20 that substitution arrangements would no longer apply to the Licensing Committee in line with legal requirements
Should there be a referral back option for Committee decisions?	Addressed in new Rule 18
How will Chairman and Vice-Chairman of Committees be appointed – as currently at the Annual Council meeting or by each Committee?	Approved by Full Council 15.07.20 Reflected in new Rule 2.1
Should there be time limits for the length of meetings	Addressed in new Rule 11
Section 3 – Committee Procedure Rules	
Extending Public Question Time to all Committees and Sub-Committees	Addressed in New Rule 10
Introducing time limits for councillors speaking	Addressed in new Rule 13.3
Should there be a standing item on agendas for the Chairman to report back on consultations they have been involved in between meetings?	Addressed in new Rule 3.1(viii)
Should there be time limits for length of meetings?	Addressed in new Rule 8

2.7 With the Financial Procedure Rules and Contract Standing Orders at Part 6 of the Constitution still to be reviewed, there may need to be further changes proposed to the trigger points for decision making between Members and officers for operational reasons. However, this will not impact on any Council decision to approve Parts 1 to 5 at this time, in view of the generic wording throughout referring the reader to the relevant Rule where this detail will be confirmed.

3.0 OPTIONS

- a) To approve the recommendations to Full Council, as set out in the report
- b) To not approve the recommendations

c) To make alternative proposals for consideration by Full Council

4.0 CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		✓
Relevant District Ward Councillors		✓
Other groups/persons (please specify) <ul style="list-style-type: none">Chairman and Vice-Chairman of the Working PartySenior Management Team	✓	

5.0 ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail below)	YES	NO
Financial	✓	
Legal	✓	
Human Rights/Equality Impact Assessment		✓
Community Safety including Section 17 of Crime & Disorder Act		✓
Sustainability		✓
Asset Management/Property/Land		✓
Technology		✓
Other (please explain)		✓

6.0 IMPLICATIONS:

The draft documents have been reviewed by the Section 151 Officer, Financial Services Manager and Legal Services Team to ensure they meet statutory and operational requirements.

The Council must approve a new Constitution before the Annual Council Meeting on 19 May 2021 as this is the “relevant change time” (ie the effective date) for moving to a Committee system form of governance defined in the Council’s statutory resolution of 15 January 2020. Whilst the legislation allowed the Council to delay the “relevant change time” for introducing its new arrangements, there is no further provision to delay this once the date has been resolved. In addition, the Council cannot make a further change to its governance arrangements for a period of 5 years from the date of its statutory resolution, ie not before 15 January 2025, unless this decision is approved by a referendum.

These provisions are confirmed in Sections 9L and 9KC of the Local Government Act 2000 (as amended by the Localism Act 2011)

7.0 REASON FOR THE DECISION:

To prepare a new 2021 Constitution to reflect the Council’s decision to move to a Committee system form of governance with effect from 19 May 2021.

8.0 BACKGROUND PAPERS:

Arun's Constitution

<https://www.arun.gov.uk/constitution>

Full Council Agenda and Minutes – 15 January 2020

<https://democracy.arun.gov.uk/ieListDocuments.aspx?CId=141&MId=771&Ver=4>

Full Council Agenda and Minutes – 15 July 2020

<https://democracy.arun.gov.uk/ieListDocuments.aspx?CId=141&MId=980&Ver=4>

Local Government Act 2000, as amended

<https://www.legislation.gov.uk/ukpga/2000/22/contents>