

Meeting: Policy & Resources Committee
Council

Date: 28 June 2007
12 July 2007

Report of: Director of Strategy & Governance

Subject: Amendments to the Constitution

Wards Affected: All

1. Purpose of the report

- 1.1 This report puts forward minor amendments to the Council's constitution for consideration by Policy & Resources Committee and full Council.
- 1.2 Many of these are interim adjustments, as it is likely that a fuller review of the Schemes of Delegation Committees and Sub-Committees and to Officers will be needed in the near future.

2. Recommendations

Policy & Resources Committee recommends to Council:

- 2.1 That the amendments to the constitution identified in the table in paragraph 3.7 below be approved by the full Council, to come into effect on 13 July 2007.
- 2.2 That the Chief Executive be authorised to take all necessary or incidental steps to implement the amendments as approved by the Council and the Head of Law be authorised to amend and re-issue the Council's constitutional documents accordingly.

3.0 Proposed Amendments

- 3.1 A number of changes are proposed to the Scheme of Delegations to Officers and a few to Scheme of Delegations to Committees and Sub-Committees / Overview and Scrutiny terms of reference. There are also proposed revisions to the Council's Complaints Procedures. Some of the changes will need to be reflected in other constitutional documents, such as the Articles.

- 3.2 The changes in relation to Officers involve principally the transfer of functions between Officers, rather than the delegation of any new powers or duties.
- 3.3 The changes are necessary for a number of reasons, but most importantly to secure, on an interim basis, new Director line management arrangements which take account of the sad death of Tony Miller (Director of Cultural Services) and the retirement on 30 April of Ian Long (Director of Housing & City Support).
- 3.4 Other changes recognise that several smaller units are now in practice being managed within different Directorates from those shown in the Scheme of Officer Delegations. There is also some general tidying up to take account of new legislation or to ensure that the delegations properly give the intended coverage.
- 3.5 In the case of the complaints procedure, the changes are aimed at ensuring the procedure reflects accurately the current practices in dealing with complaints, including improvements that have been made to the procedure.
- 3.6 A closer look will be taken at the Schemes of Delegation when the Council knows the full implications of the Local Government and Public Involvement in Health Bill and the new administration has had time to consider the way forward.
- 3.7 The table below includes all the proposed changes:-

	Current Position	Proposed changes
1. Transfer of functions to "Finance and Resources" Department	The functions of the Information and Communications Technology Division (ICT) and Data Protection and Freedom of Information Division (DP/FI) are delegated functions of the Director of Cultural Services. The functions of the Customer Services Division (local taxation, benefits, access services, life events etc) are delegated to the Director of Housing and City Support. The aim is that central resources (like ICT & DP/FI) and major areas of financial transactions be managed centrally in one	That the delegated functions of ICT, DP/FI and Customer Services Divisions and any teams managed by the heads of those divisions be transferred to the Director of Finance & Property, and her title and the Directorate be re-named "Finance and Resources".

	department under the control of the section 151 Chief Finance Officer, who will be leading on customer focus for the Council.	
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<p>2. Otherwise interim measures to continue</p>	<p>The remainder of the functions of the Cultural Services Department are being discharged by Assistant Director Scott Marshall as the Acting Director of Cultural Services and, in relation to communications, by Jenny Rowlands, Director of the Environment.</p> <p>The functions of the Housing Division of the Housing and City Services Department (Housing Strategy, Housing Management and Learning Disability Services delivered as part of Section 75 arrangements) are being discharged by Assistant Director Jugal Sharma as the Interim Director of Housing.</p> <p>The Adult Social Care and Health Services (excluding Learning Disability Services) and statutory Director of Social Services functions are being discharged by Assistant Director Denise D’Souza as the Interim Director of Adult Social Care & Health.</p>	<p>That these arrangements be continued for the time being.</p>
<p>3. Recognising the implementation of the Children and Young People’s Trust</p>	<p>During the transitional period of the creation of the Children and Young People’s Trust, the two titles of “Director of Children, Families and Schools” and “Director of Children’s Services” were in use and the Director’s department was still referred to as the “Department of Children Families and Schools”. These references need to be amended now that the Children and Young People’s Trust is fully up and running.</p>	<p>That the references in the Council’s constitutional documents to the Director and the Department of “Children, Families and Schools” be amended to “Director of Children’s Services” and “Children and Young People’s Trust” as necessary.</p>

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<p>4. Recognising transfer of Sustainability team</p>	<p>The Sustainability Team were managed within the Environment Department by the City Planner. However, they are not physically located with City Planning and their work is more akin to the development of corporate and city wide strategies which fall within the Strategy and Governance Department. Line management of the team has for practical purposes been transferred to the Director of Strategy & Governance. Recognising this does not mean any change in Committee Delegations - co-ordinating sustainability rests with the Environment Committee and formulation of corporate strategies lies with Policy and Resources Committee, both advised by the Sustainability Commission. However, a small amendment to Officer Delegations is required.</p>	<p>That the reference to co-ordinating and implementing the Council's Sustainability Strategy be deleted from the delegated functions of the Director of the Environment.</p> <p>[There is no need to amend the delegated functions of the Director of Strategy and Governance, as he already has delegated to him general responsibility for and the exercise of the functions of the Council in relation to the development of corporate and city wide strategies.]</p>
<p>5. Recognising transfer of the Project Services team</p>	<p>Project Services is a small team that manages corporate and directorate programmes and projects, conducts service improvement reviews and provides project management and service review advice and guidance. It was been managed by the Director of Finance & Property, but now is effectively under the Director of Strategy & Governance as its functions fit better with his general remit.</p>	<p>That the reference to managing the Project Services team be deleted from the delegated functions of the Director of the Finance & Property.</p> <p>[For the same reason as is mentioned in 4 above, there is no need to amend the delegated functions of the Director of Strategy and Governance.]</p>

<p>6. Changes to take account of internal re-organisation</p>	<p>Between autumn and the new year, Departments made a number of changes to their internal arrangements. Some senior officers below Director level several retired or were made redundant. Although this has not altered the functions of Directorates, the Council's constitutional documents are likely to need some consequential changes, which have not been picked up yet – eg the merging of functions which were previously shown as the responsibility of more than one Assistant Director.</p>	<p>That consequential amendments to the Council's constitutional documents be made, as necessary.</p>
<p>7. Minor changes to environmental health delegations</p>	<p>Schedule 2 (part II) of the Officer Scheme of Delegations includes a list of Acts under which environmental health powers may be exercised & notices served. It is not intended to be an exhaustive list and omission of any particular Act does not prejudice the general power to take action on any environmental health matter. However, it would be preferable for the list of Acts to be updated to include all the relevant major legislation.</p>	<p>That the following be added to Schedule 2 part II of the Scheme of Officer Delegations:-</p> <p>Noise Act 1996 Anti-Social Behaviour Act 2003 Clean Neighbourhoods and Environment Act 2005 Animal Welfare Act 2006</p>
<p>8. Minor changes to highway delegations</p>	<p>There are two separate references in the Scheme of Delegations to Officers to the power of the Director of Environmental to exercise highway functions (paragraphs 7 and 26, both of which refer to Schedule 8 which has more detail). For clarity,</p> <ol style="list-style-type: none"> 1. these need to be combined as one general provision; 2. the references to certain specific powers which are 	<p>That the delegated powers of the Director of the Environment in relation to highway functions be amended as follows:-</p> <ol style="list-style-type: none"> 1. replacement of current paragraphs 7 (Highways) and 26 (Miscellaneous Environmental Powers) with the following single paragraph 7 - "To exercise the Council's functions regarding

	<p>in paragraph 26 need to be moved to Schedule 8 and simplified; and</p> <p>3. it would be useful to add a clear reference to the power to deal with obstructions and the like in Schedule 8.</p>	<p>Highways, including those set out in Schedule 8 to this Scheme of Delegations.”</p> <p>2. the deletion of current paragraph (10) in Schedule 8 and the addition of the following paragraph, after current paragraph (1) - “(2) Without limiting the scope of paragraph (1) above, to exercise the Council’s functions in relation to licences and permits under the Highways Act 1980 section 115A to K (amenities on the highway), section 139 (control of builders’ skips) section 169 (control of scaffolding and hoardings), and section 171 (control of builders material etc).”</p> <p>3. the addition of the following paragraph in Schedule 8 - “To exercise the powers and duties of the Council in relation to (a) the interference with, or obstruction to any highway, or (b) any nuisance on any highway or land adjoining a highway.”</p>
<p>9. Putting right an anomaly in the disposal functions</p>	<p>The disposal of dwellings is required, under the Local Authorities (Alternative Arrangements) (England) Regulations 2001, to be reserved to the full council in certain circumstances relating to major disposals, but the wording in Article 5 of the Council’s Constitution is too much of a summary and does not reproduce the provisions of the Regulations sufficiently accurately. As this causes</p>	<p>That</p> <p>1. Article 5 of the Council’s Constitution be reworded to reflect accurately the requirements of Regulation 4(2)(d) of the Local Authorities (Alternative Arrangements) (England) Regulations 2001 in relation to disposals of dwellings and</p> <p>2. Delegated function 15(b) of the Policy and Resources Committee be amended to read “The authorisation of the</p>

	<p>difficulty in interpretation, it is proposed to amend Article 5 and to adjust appropriately the delegated functions of the Policy and Resources Committee so that they are consistent with the matters reserved to the full Council.</p>	<p>acquisition or disposal of any land held by the Council providing that any proposal for the transfer of housing land which requires the approval of the full Council shall be referred to full Council with recommendations.”</p>
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<p>10. Changes to complaints procedures</p>	<p>The Standards and Complaints Manager has reviewed the Council's Complaints procedures and proposes minor amendments which, it is hoped, are shown in sufficient detail in Appendix 2 to this report as to be self explanatory.</p>	<p>That the amendments to the Council's Complaints Procedures set out in Appendix 2 to this report be adopted.</p>
<p>11. Additional postholder to be able to seal documents</p>	<p>Under Article 12 of the Constitution, the Monitoring Officer, Head of Law and two Principal Solicitors are authorised to attest the common seal of the Council. These postholders are often less easily available than the Senior Lawyer in charge of the Property Team. As it is this team which produces many of the documents which require sealing, it is proposed to add the team head to the list of those authorised to attest the seal.</p>	<p>That Article 12 paragraph 12.04(c) of the Council's constitution be amended by the addition of the Senior Lawyer in charge of the Legal Services' Property Team as a postholder authorised to attest the common seal of the Council.</p>
<p>12. Changes for the Gambling Act</p>	<p>The Gambling Act 2005 requires a number of changes to Committee / Sub-committee / Officer delegations.</p>	<p>That</p> <ol style="list-style-type: none"> 1. the terms of reference of Policy and Resources Committee be amended to add "and the Gambling Act 2005" to the current delegated function of the adoption and review of the Statement of Licensing Policy under the Licensing Act 2003, 2. the terms of reference and delegated functions of the Licensing Committee, the Licensing Panel, the Director of the Environment and the Assistant Director Public Safety be amended as shown in Appendix 3 of this report and 3. that the Head of Law be authorised to make any other amendments to the Council's

		constitution consequential on the enactment of the Gambling Act 2005.
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4.0 Consultation

4.1 Relevant Officers and TMT have been consulted on the proposals.

Appendix 1

Meeting/Date	Policy & Resources Committee 28 June 2007 Council 12 July 2007
Report of	Director of Strategy & Governance
Subject	Amendments to the Constitution
Wards affected	All

Financial implications

There are no direct financial implications arising from this report.

Officer consulted: Date

Legal implications

Changes to the Scheme of Delegations to Officers can be made by Policy and Resources Committee, but the changes to Scheme of Delegations to Committees and Sub-committees and to the Complaints Procedure require the approval of full Council. There are no human rights implications which need to be drawn to Members' attention.

Lawyer consulted: John Heys Date 2 May 2007

Corporate/Citywide implications

The proposals relate to the Council's constitution and therefore have a City-wide impact.

Risk assessment

It was not considered that any of the proposals required a detailed risk assessment.

Sustainability implications

There are no relevant sustainability implications to draw to Members' attention.

Equalities implications

None of the proposals should have an adverse impact on equalities.

Implications for the prevention of crime and disorder

There are no direct implications for crime and disorder arising from this report.

Background papers

No unpublished background papers have been relied on to a material extent in writing this report. (The Council's current constitutional documents are published and available via the Council's web-site.)

Contact Officer

John Heys, Principal Solicitor, ext 1549
Abraham Ghebre-Ghiorghis, Head of Law, ext 1500

Appendices

Appendix 2 Proposed amendments – dealing with complaints
Appendix 3 Proposed amendments – gambling act

Proposed amendments to “Dealing with Complaints” - the Council’s Complaints Procedure

It is proposed that the paragraphs in the complaints procedure, the numbers of which are listed in Column 1 below and the content shown in column 2 below, be amended as shown in column 3 below.

These changes are aimed at ensuring the procedure reflects accurately the current practices in dealing with complaints, including improvements that have been made to the procedure.

Column 1	Column 2	Column 3
Para	Content- Old	Revision- New
1.1	This document supplements the council’s leaflet “How do I make a complaint” which is available at all council reception points and on request from the Standards and Complaints team at Bartholomew House	This document supplements the council’s leaflets “Complaints, Comments & Compliments- Tell us what you think” which is available at all council reception points and “Complaints ,Comments & Compliments - Corporate Complaints Procedure” available on request from the Standards and Complaints team at Kings House.
4.2	...Stage 1 of the procedure comes in.	...Stage One should be used.
5.1.3	<ul style="list-style-type: none"> when the complainant can expect a reply. This should be within ten working days of the complaint being received 	<ul style="list-style-type: none"> when the complainant can expect a reply. We aim to achieve this within ten working days of the complaint being received. What options are available if the person is not satisfied with the reply they receive.
5.1.3	Complaints received by email or telephone can be acknowledged by email or telephone but the above principles still apply	Complaints received by email, via the internet or by fax can be acknowledged by email or fax but the above principles still apply.
5.1.4	Although our procedure allows ten working days to provide a reply...	Although our procedure states we aim to reply within ten working days...
5.1.5	Our responses to complaints should be in writing wherever	Our responses to complaints will usually be in writing in a style and

	possible. This will be particularly important when the complaint is very complicated. Letters sent in reply to complaints should:...	font appropriate to needs of the reader. It is considered good practice to discuss the Council's response either face to face or by telephone before confirming an outcome in writing. This will be particularly important when the issue is complex and there is a possibility of misinterpretation of a written response. Letters sent in reply to complaints should:...
5.1.5		<p>Add to existing bullets</p> <ul style="list-style-type: none"> • be clearly legible using at least font size 12, but larger for someone who may have difficulty reading. • describe what evidence has been taken into consideration in reaching a conclusion • explain the reasons for your conclusion (then continue list as per old document)
5.1.6	...A telephone response will generally be appropriate for more straightforward matters which can be resolved quickly...	...A telephone response is an appropriate way of dealing with straightforward matters, but a record should be made of the agreement with the customer....
5.1.8	If it is not possible to send a full reply within ten working days a holding reply should be sent, telling the complainant who is dealing with the complaint and what action is being taken.	As soon as the respondent realises that it will not be possible to send a full reply within ten working days a holding reply should be sent, telling the complainant who is dealing with the complaint and what action is being taken and by when they may expect a full reply.
5.2	...stage 1	...Stage One
5.2	...stage 2	...Stage Two
5.2.2	...stage 2	...Stage Two
5.2.2	[Address only given]	[Address and ..] Or using email to: complaints@brighton-hove.gov.uk
5.2.8	...stage 2	...Stage Two

7.2	...stage 2	...Stage Two
8.1	A leaflet “How to complaint to the Local Government Ombudsman” is available at main council reception desks.	A leaflet “ Complaints about the council- How to complaint to the Local Government Ombudsman” is available at main council reception desks.
8.2	The council’s procedure for dealing with Ombudsman complaints is contained in the council’s handbook and is also available from the Standards and Complaints Team.	The council’s procedure for dealing with Ombudsman complaints is available from the Standards and Complaints team.
9.1	Complaints about elected and co-opted members of the council should be referred to the Monitoring Officer or Standards & Complaints Manager.	Complaints about elected members and co-opted members of the council should be referred to the Standards Board for England. When they receive allegations about member misconduct, the Standards Board conduct an initial assessment to determine whether the allegations could amount to a breach of the local code of conduct or whether they are not serious enough to justify the use of resources in an investigation.
9.2	(none)	Further advice on making complaints about member conduct can be obtained from the Monitoring Officer or Standards & Complaints Manager and is available from the Standards Board for England website: www.standardsboard.co.uk or their leaflet “how to make a complaint”.
13.1	Final bullet point - Complaints about Councillors’ conduct.	Final bullet point - Complaints about Members’ conduct
13.2	Where a decision has been made not to deal with a complaint through the complaints procedure...	Where a decision has been made not to deal with a complaint through the corporate complaints procedure...
15.2	More information about these services is available from the council’s Communications Team	More information about these services is available from the Standards & Complaints Team.
17.2	The Standards & Complaints team	The Standards & Complaints team

	<p>can be contacted as follows: [address and phone number given]</p>	<p>can be contacted as follows:</p> <p>complaints@brighton-hove.gov.uk</p> <p>Brighton & Hove City Council Standards & Complaints FREEPOST SEA2560 Brighton BN11ZW</p> <p>Freephone: 0500 291229</p>
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Proposed amendments for the Gambling Act 2005

The proposed changes are shown in italics.

LICENSING COMMITTEE

Explanatory Note

The Licensing Committee is responsible for discharging the Council's functions under the Licensing Act 2003 *and the Gambling Act 2005*. It also has responsibility for all licensing and registration functions not covered by the Licensing Act 2003. The day to day decisions on individual applications are dealt with by the Licensing Panel.

Delegated Functions

1. Licensing Act 2003
 - (a) *[deleted – provisions below to be renumbered]*
 - (b) To discharge all functions which, under the Act, stand referred to a Licensing Committee, including, but not limited to the following:
 - (i) Applications for a personal licences;
 - (ii) Applications for premises licence/club premises certificate;
 - (iii) Applications for provisional statement
 - (iv) Applications for Interim Authorities
 - (c) The powers of the Committee under 1(b) shall include the power to deal with all applicants for the grant, renewal, variation or revocation of any licence or consent or any actions which a Licensing Committee is required or authorised to take under the Act.
 - (d) The delegated powers of the Committee shall not include the adoption or review of the Statement of Licensing Policy (which are delegated to the Policy and Resources Committee).
2. *Gambling Act 2005*

- (a) *To discharge all functions which under the Act stand referred to the Licensing Committee, including but not limited to the following:*
 - (1) *Applications for premises licences*
 - (2) *Applications for provisional statements*
 - (3) *Applications for club gaming/club machine permits*
- (b) *The powers of the Committee under 2 (a) shall include the power to deal with all applications for the grant, renewal, variation, cancellation or revocation of any licence or consent or any actions which a licensing committee is required or authorised to take under the Act*
- (c) *The powers of the committee shall also include the power to set fees pursuant to section 212 of the Act, but shall not include the power to adopt or review the Licensing Policy which is delegated to the Policy and Resources Committee.*

3. Other Licensing and Registration Functions

- (a) To discharge all the Council's functions regarding licensing and registration.

Referred Functions

1. Advising the Policy and Resources Committee regarding the Statement of Licensing Policy *both under the Licensing Act and the Gambling Act 2005.*
2. To advise the Council and other Committees on matters related to functions under the Licensing Act 2003, *and the Gambling Act 2005* but *which* are not themselves Licensing Act *or* Gambling Act functions.

NB: In accordance with the Council's resolution of 22nd April 2004, the Licensing Committee and the Licensing Panel may operate as two separate committees and sub-committees respectively with identical membership. The functions of the two separate committees/sub-committees shall relate to Licensing Act *and* Gambling Act functions and non-Licensing Act functions respectively.

Licensing Panel

In the Explanatory Notes Paragraph:-

Add a reference to the Gambling Act 2005 after the Licensing Act 2003.

After section 1 Delegated Functions:-

Add delegated functions for the Gambling Act 2005 which are identical to those in section 1 for the Licensing Act 2003 and renumber the sections below accordingly.

In section 4 (to be renumbered 5):-

Add a reference to the Gambling Act 2005 after the Licensing Act 2003.

Amend the last sentence to read The functions of the two separate committees/sub-committees shall relate to Licensing Act/Gambling Act functions and non-Licensing Act functions respectively.

Officer Delegations

Director of the Environment and Assistant Director Public Safety

Licensing and Registration

At section 22(1):-

Add a reference to the Gambling Act 2005 after the Licensing Act 2003.

At section 22(3) which lists the case where officers do NOT have delegated power to grant licences, add the following to the current delegations:-

- (iii) In relation to the following matters under the Gambling Act 2005*
- (a) the determination of an application for a premises licence where representations have been made and not withdrawn*
 - (b) the determination of an application for a variation of a premises licence where representations have been received and not withdrawn*
 - (c) the determination of an application for the transfer of a premises licence where representations have been received from the commission*
 - (d) the determination of an application for a provisional statement where representations have been received and not withdrawn*
 - (e) the determination of an application for a review of a premises licence*
 - (f) the determination of an application for club gaming/club machine permits where objections have been made*
 - (g) the cancellation of club gaming/club machine permits*
 - (h) the decision to give a counter notice to a temporary use notice*

At Schedule 3, which lists the circumstances where officers DO have powers to grant licences etc:-

Introductory Note:-

Amend this to read “Note: The list below lists Licensing Act 2003, Gambling Act 2005 and other functions.”

The text of Schedule 3:-

Amend by deleting all the Acts repealed by the Gambling Act 2005 (and any other legislation). Renumber as necessary.

Add the following in relation to the Gambling Act 2005:-

“Functions under the Gambling Act relating to

- (a) Premises licences*
- (b) Provisional statements*
- (c) Club gaming /club machine permits*
- (d) Applications for other permits under the Act*
- (e) Consideration of temporary use notice”*