

<b>Title of Report:</b>	<b>Changes to the Constitution – Part 13 Codes and Protocols</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	4 March 2014
<b>Forward Plan Ref:</b>	C2771

**Purpose of Report:** To review and amend sections of Part 13 (Codes and Protocols) i.e. Appendices A (West Berkshire Code of Conduct for Planning), D (Gifts and Hospitality: A Code of Conduct for Councillors), E (Procedure for Local Determination of Allegation) and G (West Berkshire Code of Conduct for Licensing) in light of legislative changes, policy changes and recent government guidance.

**Recommended Action:**

1. To agree the amendments and any additional changes required.
2. To agree that the changes will come into effect on the 05 March 2014.

**Reason for decision to be taken:** To ensure that the Council has adjusted the scheme in light of legislative and policy changes.

**Other options considered:** Not to agree the changes

**Key background documentation:** None

The proposals will help achieve the following Council Strategy principles:

**CSP7 - Empowering people and communities**

**CSP9 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy principles by:

Ensuring that the Constitution is up to date

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<b>Date Portfolio Member agreed report:</b>	10 February 2014

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## Implications

<b>Policy:</b>	Will require changes to the Constitution
<b>Financial:</b>	None – will be undertaken within existing resources.
<b>Personnel:</b>	None
<b>Legal/Procurement:</b>	Will require the Constitution to be updated
<b>Property:</b>	None
<b>Risk Management:</b>	None

Is this item relevant to equality?	Please tick relevant boxes		Yes	No
Does the policy affect service users, employees or the wider community and:				
• Is it likely to affect people with particular protected characteristics differently?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)				
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>	<input checked="" type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>Is this item subject to call-in?</b>	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input checked="" type="checkbox"/>

# Executive Summary and Report

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## 1. Introduction

- 1.1 West Berkshire Council's Code of Conduct for Councillors was adopted by Full Council at its meeting on 10th May 2012 and came into effect from 1st July 2012. A scheduled review of the Code of Conduct and the underpinning processes was undertaken in the second half of 2013 by both the Standards Committee and the Governance and Audit Committee. The ensuing amendments were adopted at the December 2013 Council meeting.
- 1.2 It is therefore now necessary to re-write Appendix E (Procedure for Local Determination of Allegations) to reflect the revised governance arrangements and procedures for dealing with complaints made against District, Town and Parish Councillors.
- 1.3 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution.
- 1.4 A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers have been involved in revising specific parts of the Constitution. This report proposes amendments to sections of Part 13 (Codes and Protocols) namely: Appendices A (West Berkshire Code of Conduct for Planning), D (Gifts and Hospitality: A Code of Conduct for Councillors), E (Procedure for Local Determination of Allegations) and G (West Berkshire Code of Conduct for Licensing) in light of legislative changes, policy changes and recent government guidance.
- 1.5 The existing Protocol for Planning (Appendix A) and the Protocol for Dealing with Gifts and Hospitality by Councillors (Appendix D) have had to be substantially re-written and therefore the tracked changes have not been shown.
- 1.6 Appendices D and E were considered by the Standards Committee on the 13 January 2014 and they proposed a few minor amendments to Appendix D. The Standards Committee recommended approval of the two Appendices.
- 1.7 The Governance and Audit Committee considered all the appendices and there recommended amendments are also set out below.

## 2. Part 13 Codes and Protocol – Appendix A (West Berkshire Code of Conduct for Planning)

- 2.1 The following key changes have been made to the document by Officers:
  - (a) To align this Part of the Constitution with the revisions to the Councillors Code of Conduct (Appendix H to part 13 of the Constitution) and the Officers' Code of Conduct as set out in Part 13 of the Constitution.
  - (b) To amend the Code in light of the Localism Act 2011 and the document issued by the Local Government Association entitled "Probity in Planning".

Two particular areas of the Localism Act are relevant to this Code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for Councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Councillors and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.

2.2 The following changes were proposed by the Governance and Audit Committee:

Item/ Ref	Amendment
Item Appendix A - Paragraph 15.3	This paragraph did not reflect current practice and should be amended to read 'A site visit is used to assess the impact of the proposed development on any locality.'
Item Appendix A - Paragraph 16.2	Replace the word 'may' with 'must' in the first line.

### 3. **Part 13 Codes and Protocol – Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors)**

3.1 The following key changes have been made to the document by Officers:

- (a) The document has been substantially re-written with a view to making it easier to read and to ensure it accords with the revised requirements for declaring interests, gifts and hospitality set out in the Localism Act 2011.
- (b) A number of discussions have taken place on the threshold for declaring gifts and hospitality. The Standards Committee have recommended retention of the current £25.00 limit on the basis that Councillors are familiar with this limit.
- (c) The amended protocol takes into consideration changes required following the enactment of the Bribery Act 2010 which came into force on the 01 July 2011 which creates offences of 'bribing another person' or 'being bribed'.
- (d) The revised protocol also gives examples of when it might be appropriate to accept gifts and hospitality.

3.2 The Standards Committee requested that the following additional amendments be made to the document:

- (a) In relation to Rule 1 that required Councillors to seek authorisation from the Monitoring Officer prior to accepting any gifts and hospitality be amended so that it only applied to hospitality.
- (b) the second bullet point under the heading 'gifts which are more likely to be considered acceptable' be extended to include 'training' and 'working meetings'

- (c) a reference to gifts or hospitality received by Councillor's spouses/ partners be included in the introduction.

3.3 The following changes were proposed by the Governance and Audit Committee:

Item/ Ref	Amendment
Item Appendix D	Last paragraph remove the reference to the form
Item Appendix D - Gifts which are most likely to be considered as acceptable	Sentence to start with a capital 'M'

#### 4. Part 13 Codes and Protocol – Appendix E (Procedure for Local Determination of Allegations)

4.1 The appendix had been re-written to take into account the revised arrangements pertaining to the Standards Regime adopted at the 01 July 2012 Council meeting and reviewed at the December 2013 meeting.

4.2 It was noted that the number of complaints received by the Standards Committee remained relatively low and to date no hearings had taken place under the new system. It might therefore be necessary to reconsider the latter stages of the procedure in light of any operational difficulties experienced once a hearing had taken place.

4.3 The following changes were proposed by the Governance and Audit Committee:

Item/ Ref	Amendment
Item Appendix E – Paragraph 1.2	Remove the word 'the' before the 01 July 2012
Item Appendix E – Paragraph 5.3	Insert the word 'member' after 'subject' in the first line
Item Appendix E – Paragraph 6.2	Insert the word 'the' before Director of Public Prosecutions in the first line.
Item Appendix E – Paragraph 8.8	Penultimate line replace the word 'complaint' with 'complainant'
Item Appendix E – Paragraph 11.3 (v)	Insert a bracket after the word appropriate.

#### 5. Part 13 Codes and Protocol – Appendix G (West Berkshire Code of Conduct for Licensing)

5.1 The following key changes have been made to the document by Officers:

- (a) The document has been amended with a view to making it easier to read.
- (b) The document has been amended to reflect the changes that have recently been made to the Code of Conduct for Councillors, the Code of Conduct for Officers and changes to the protocol associated with gifts and hospitality.

- (c) The Localism Act 2011 amended requirements in relation to interests that have to be declared and this has been reflected in the document.
- (d) References to the Standards Board and the old national Code of Conduct have been changed to reflect the current Standards regime.
- (e) The document had been amended to ensure that reference was made to the requirements of the Gambling Act 2005.

5.2 The following changes were proposed by the Governance and Audit Committee:

Item/ Ref	Amendment
Item Appendix G paragraph 4.3	Delete the last it paragraph on page 132 as it has been repeated
Item Appendix G Paragraph 6	Should be headed 'Interests'
Item Appendix G Paragraph 13.3	Should refer to Licensing Policies

## 6. Proposals

6.1 It is proposed that the amendments to Part 13 Appendices A, D, E and G of the Council's Constitution be approved.

## 7. Equalities Impact Assessment Outcomes

7.1 This item is not relevant to equality.

## 8. Conclusion

8.1 The report is a required update to take cognisance of legislative and policy changes. For the avoidance of doubt the changes will come into effect on the 05 March 2014.

## Appendices

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Appendix A – Appendix A - West Berkshire Code of Conduct for Planning  
 Appendix B – Appendix D – Gifts and Hospitality: A Code of Conduct for Councillors  
 Appendix C – Appendix E – Procedure for Local Determination of Allegations  
 Appendix D – Appendix G – West Berkshire Code of conduct for Licensing

## **Consultees**

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**Local Stakeholders:** Standards Committee

**Officers Consulted:** Andy Day, Sarah Clarke, Moira Fraser, Finance and Governance Group, David Pearson, Derek Carnegie, Gary Rayner, Brian Leahy, Paul Anstey and Corporate Board

**Trade Union:** Not consulted