

<b>Title of Report:</b>	<b>Amendments to the Constitution - Scheme of Delegation</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	01 March 2012
<b>Forward Plan Ref:</b>	C2454

<b>Purpose of Report:</b>	<b>To review and amend sections of the Scheme of Delegation in light of recent legislative changes and to take account of the changes arising from the Senior Management Review.</b>
<b>Recommended Action:</b>	<b>To approve the recommended actions and where necessary produce clarity on the Scheme.</b>
<b>Reason for decision to be taken:</b>	To align functions in line with changes to the Council's Management Structure and governance arrangements, as well as any changes to legislation.
<b>Other options considered:</b>	None - The Constitution has to be updated.
<b>Key background documentation:</b>	Relevant legislation

The proposals will also help achieve the following Council Plan Themes:	
<input checked="" type="checkbox"/>	<b>CPT12 - Including Everyone</b>
<input checked="" type="checkbox"/>	<b>CPT15 - Putting Customers First</b>
<input checked="" type="checkbox"/>	<b>CPT16 - Excellent Performance Management</b>
The proposals contained in this report will help to achieve the above Council Plan Themes by: ensuring that the Constitution is up to date.	

<b>Member Details</b>	
<b>Name &amp; Telephone No.:</b>	Councillor Jeff Beck
<b>E-mail Address:</b>	jbeck@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	2 February 2012

<b>Contact Officer Details</b>	
<b>Name:</b>	Andy Day
<b>Job Title:</b>	Head of Policy and Communication
<b>Tel. No.:</b>	01635 519459
<b>E-mail Address:</b>	aday@westberks.gov.uk

## Implications

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**Policy:** Will require changes to the Constitution  
**Financial:** None – will be undertaken within existing resources.  
**Personnel:** None  
**Legal/Procurement:** Will require the Constitution to be updated  
**Property:** None  
**Risk Management:** None  
**Equalities Impact Assessment:** Stage 1 EIA completed

Is this item subject to call-in?	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"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	

# Executive Summary

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## 1. Introduction

- 1.1 All Directors and Heads of Service have been asked to advise of any changes they require to the Scheme of Delegation to ensure that the Council's Constitution is as up to date as possible. This report lists all of the proposed changes for Council to consider.
- 1.2 The following principles have been used to make changes to the Scheme of Delegation:
  - (i) References to Personnel Committee.
  - (ii) Changes in delegation relating to the Returning Officer.
  - (iii) Amendments following the Senior Management Review.
  - (iv) Changes in legislation.

## 2. Proposals

- 2.1 It is proposed that the revised Scheme of Delegation be approved.

## 3. Conclusion

- 3.1 The report is a required update, due to the changes in service area names, job roles and changes to legislation.

# Executive Report

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## 1. Introduction

- 1.1 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.
- 1.2 A timetable has now 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 Part 3 of the Constitution, the Scheme of Delegation.
- 1.3 The Scheme of Delegation summarises which part of the decision-making process (e.g. the Council, Executive, the Area Planning Committees, Licensing Committee/Sub-Committee, the Standards Committee and the Personnel Committee) is responsible for which function. This Scheme also sets out the extent to which the powers and duties of the Council are delegated to Officers.
- 1.4 All Directors and Heads of Service have been asked to advise of any changes they require to the Scheme of Delegation to ensure that the Council's Constitution is as up to date as possible. The report proposes a number of changes for the Council to consider. These are set out below.
- 1.5 The following key changes have been made to the document by Officers:
- Amendments to make reference to the functions of the Personnel Committee;
  - Insertion of a paragraph in the general pre-ambule in an endeavour to ensure continuity following any reorganisation / restructure;
  - Changes to the delegations relating to the Returning Officer;
  - Amendments and re-alignment of functions to Service Areas, following reorganisation within the Council;
  - Updates in respect of changes to legislation;
  - Throughout this section, the words 'Officer Delegation Rules' have been replaced by 'Scheme of Delegation'.
- 1.6 A full list of amendments is set out in the table below.

<b>Constitution Page No</b>	<b>Paragraph</b>	<b>Change</b>	<b>Comments/Reason</b>
1	3.1.2 - Table 1	Delete the words 'Housing/ Homelessness = 3 Members'	Amendment
2 & 3	3.1.2 – Table 1	Delete – 'Head of Property and Public Protection' and replace with 'Head of Culture and Environmental Protection'.	SMR
3	3.1.2 – Table 1	For the function "The obtaining of information under Section 330 of the Town and Country Planning Act 1990" the delegation of function to be amended to read "the Head of Planning and Countryside" rather than the Head of Legal and Electoral Services	SMR
5	3.1.3 – Table 2	Under the function "Power to make Standing Orders as to contracts" the delegation of functions should read "the Head of Legal Services" and not the Head of Legal and Electoral Services	SMR
6 & 7	3.1.3 – Table 2	Delete – 'Head of Property and Public Protection' and replace with 'Head of Culture and Environmental Protection'. Delete 'Head of Legal and Electoral Services' and replace with 'Head of Legal Services'	SMR
6	3.1.3 – Table 2 – 5 <sup>th</sup> row	Function should read 'Duty to keep and maintain a register of commons' and the words 'register of information in respect of maps, statements and declarations' should be deleted. Delegation of functions should read 'Functions delegated to the Head of Legal Services as set out in the Scheme of Delegation' and the words 'Functions delegated to the Head of Planning and Countryside as set out in the	SMR

Constitution Page No	Paragraph	Change	Comments/Reason
		Officer Delegation of Rules' to be deleted.	
11	3.2.4	General Requirements – 2 <sup>nd</sup> bullet – delete the words 'Parts 4 – 12 of' and 'Contract and Financial Rules of Procedure'.  3 <sup>rd</sup> bullet – add the word 'and;' at the of the bullet point.  4 <sup>th</sup> bullet – delete the words 'and the Members and Officers' Code of Conduct'.	Amendment
12	3.2.3 – last paragraph	Delete the words 'Head of Legal and Electoral Services' and replace with 'Head of Legal Services'	SMR
13	3.3.3 – 19 <sup>th</sup> main bullet	Delete the words 'Head of Policy and Communication' and replace with the words 'Head of Strategic Support'	SMR
14	3.3.6 – (a) Heading	Delete the words 'Children and Young People' and replace with 'Communities'	SMR
15	3.3.6	Delete the heading '(b) Community Services'	SMR
16	3.4	'Head of Legal and Electoral Services' to be replaced with 'Head of Legal Services';  'Head of Policy and Communication' to be replaced with 'Head of Strategic Support';  'Head of Property and Public Protection' to be replaced with 'Head of Culture and Environmental Protection'.	SMR
19	3.4.1	'3.17' should read '3.16'	Amendment

<b>Constitution Page No</b>	<b>Paragraph</b>	<b>Change</b>	<b>Comments/Reason</b>
20	3.5.3.	Second bullet point – Head of Legal and Electoral Services should read Head of Legal Services	Amendment
20	3.5.3	Third bullet point – Communities should read Community Services	Amendment
20	3.5.3	Fifth bullet point – Head of Care Commissioning, Housing and Safeguarding – delete Head of Housing	Amendment
20	3.5.3	Tenth bullet point – delete Rule 11.3.2. Contract Rules of Procurement should read Contract Rules of Procedure	Amendment
22	3.5.13	First bullet point – Head of Legal and Electoral Services should read Head of Legal Services	Amendment
22	3.5.13	Fifth bullet point – Head of Legal and Electoral Services should read Head of Legal Services	Amendment
22	3.2.14	First bullet point – conjunction should read consultation. Head of Legal and Electoral Services should read Head of Legal Services.	Amendment
23	3.5.15	Sixth bullet point – Head of Legal and Electoral Services should read Head of Legal Services	Amendment
23	3.5.15	Seventh bullet point – Head of Legal and Electoral Services should read Head of Legal Services	Amendment
28	3.8	Head of Housing & Performance should read Head of Care Commissioning, Housing and Safeguarding.	Amendment
29	3.8.4	Delete Housing Associations	Amendment

<b>Constitution Page No</b>	<b>Paragraph</b>	<b>Change</b>	<b>Comments/Reason</b>
29	3.8.5	Second bullet point – Housing act 2004 – replace with Housing Act 2004.	Amendment
30	3.9	Replace Head of Policy and Communication with Head of Strategic Support.	Amendment
31	3.12.2	Third bullet point – replace Head of Legal and Electoral Services with Head of Legal Services.	Amendment
32	3.12.3	Third bullet point – replace Head of Legal and Electoral Services with Head of Legal Services.	Amendment
32	3.12.3	Eighth bullet point – replace Head of Legal and Electoral Services with Head of Legal Services.	Amendment
33	3.12.3	Thirty-sixth bullet point – replace Head of Legal and Electoral Services with Head of Legal Services.	Amendment
34	3.12.3	Thirty-ninth bullet point – replace Closures with Clauses	Amendment
34	3.12.3	Fortieth bullet point – delete (in consultation with Head of Finance)	Amendment
35	3.12.6, bullet point 14	Insert the wording: ‘In consultation with the Head of Finance’	Amendment
36	3.12.6, bullet point 1	Insertion of the word: ‘powers’	Amendment
36	3.12.7, 4 <sup>th</sup> paragraph	Insert the wording: ‘As amended by the Flood and Water Management Act 2010  To grant consent for any works on ordinary water	In line with the Flood and Water Management Act 2010.



<b>Constitution Page No</b>	<b>Paragraph</b>	<b>Change</b>	<b>Comments/Reason</b>
		courses.'	
36	3.12.13	<p>Insert the wording: 'Flood and Water Management Act 2010</p> <p>Section 7 – to act as Lead Local Flood Authority for West Berkshire;</p> <p>Sections 14 &amp; 15 – Power to request information in connection with the Authority's flood risk management functions;</p> <p>Section 30 – Power to designate structures and features that affect flooding (in consultation with the Head of Legal Services).'</p>	In line with the Flood and Water Management Act 2010.
37	3.13	Delete 'Head of Legal and Electoral Services' and replace with 'Head of Legal Services'	SMR
37	3.13.1, 3 <sup>rd</sup> bullet point	Insert the wording: 'Sealing of all documents on behalf of the Council'	Amendment
40	3.13.11, final bullet point	Delete 'Community Services' and insert 'Communities'	SMR
41	3.14.1, first, second and fourth bullet point	Delete 'Head of Legal and Electoral Services' and replace with 'Head of Legal Services'	SMR
42	3.14.4, second bullet point	Delete 'Head of Legal and Electoral Services' and replace with 'Heads of Legal Services and Highways and Transport.'	Amendment
42	3.14.4, Point 4	Delete 'arrange for the temporary use of land for the dumping or storing of highways material or equipment'. Insertion of: 'keep	Amendment

Constitution Page No	Paragraph	Change	Comments/Reason
		the definitive maps and statement under review'	
49	3.15	Delete 'Head of Property and Public Protection' and replace with 'Head of Culture and Environmental Protection'	SMR
49	3.15.1	Delete 'To exercise the powers and duties conferred and imposed upon the Council by Part II of the Environmental Protection Act 1990, as amended by the Environment Act 1995 (prosecuting unauthorised or harmful deposit, treatment or disposal of waste). In consultation with the Head of Legal Services to carry out all the powers and duties imposed on the Council by the Control of Pollution Amendment Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 including: the issuing of certificates of registration or renewal; the refusal of registration or its renewal; the revocation of a registration; the services of notice in order to trace the person using a vehicle involved in the illegal deposit of waste; the making of applications for a warrant to seize a vehicle; the seizure of a vehicle and its contents; the disposal of a seized vehicle and its contents. To serve Notices under the Refuse Disposal (Amenity) Act 1978 and to deal with the disposal of abandoned	Legislation

Constitution Page No	Paragraph	Change	Comments/Reason
		<p>vehicles. The day-to-day management of the Council portfolio of land and buildings, including lease renewals, assignments and rent reviews, subject to the concurrence of the appropriate Heads of Service and/or Corporate Director.</p> <p>Insertion of: 'The Head of Culture and Environmental Protection shall be authorised to enforce and administer the following primary legislation and any secondary legislation made thereunder and this includes any amendments to or updating of the legislation set out below: Anti Social Behaviour Act 2003 Clean Neighbourhoods and Environment Act 2005 Control Of Pollution Act 1974 Control of Pollution (Amendment) Act 1989 Environment Act 1995 Environmental Protection Act 1990 European Communities Act 1972 Refuse Disposal (Amenity) Act 1978</p>	
49	3.15.2	Delete 'Clean Neighbourhoods and Environment Act 2005. To exercise powers in relation to Clean Neighbourhoods and Environment Act 2005.'	Legislation
49 & 50	3.15.3	Delete 'This authorisation shall also apply to matters delegated to West Berkshire District Council by Wokingham Borough Council in the agreement of 2 <sup>nd</sup> June 2010'.	Joint arrangement with Wokingham Borough Council for Trading Standards.

Constitution Page No	Paragraph	Change	Comments/Reason
		Insertion of 'set out below. This authorisation shall also apply to matters set out in the agreement between West Berkshire District Council by Wokingham Borough Council dated 2 <sup>nd</sup> June 2010:'	
52	First main paragraph	<p>Insertion of 'the' legislation 'set out below. This authorisation shall also apply to matters set out in the agreement between West Berkshire Council by Wokingham Borough Council dated 2<sup>nd</sup> June 2010.</p> <p>Deletion of 'This authorisation shall also apply to matters delegated to West Berkshire District Council by Wokingham Borough Council in the agreement of 2<sup>nd</sup> June 2010'.</p>	Joint arrangements with Wokingham Borough Council for Trading Standards.
53		<p>Insertion of:</p> <p>'Gambling Act 2005' Housing Acts '2004'</p>	Legislation
54	3.15.5	Delete 'Head of Property and Public Protection' and replace with 'Head of Culture and Environmental Protection'.	SMR
54	3.15.5, final bullet point	Insertion of 'Head of Legal Services'	SMR
54	3.15.6	<p>Insertion of:</p> <p><b>'Culture General</b> Local Government (Miscellaneous Provisions) Act 1982, Section 41 - Action considered appropriate in relation to property found in buildings or premises administered by Cultural and Environmental Protection Services. Letting of recreation facilities and premises (also Head of</p>	SMR

Constitution Page No	Paragraph	Change	Comments/Reason
		<p>Planning and Countryside). Admission and exclusion of public to recreation facilities and premises (also Head of Planning and Countryside). Acquisition of items under Museum acquisition scheme. Administer Archive Service on behalf of all six Unitary Authorities in Berkshire. To act in conformity with the Public Libraries and Museums Act 1964, as amended, and the Local Government and Housing Act 1989 and the policies of the Council.</p> <p>To manage public libraries in conformity with the Public Libraries and Museums Act 1964 (as amended) and the Local Government and Housing Act 1989 and the policies of the Council.'</p>	

## Appendices

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Appendix A – Equality Impact Assessment – Stage 1

Appendix B – Part 3 Scheme of Delegation

## Consultees

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**Local Stakeholders:** Not consulted

**Officers Consulted:** All Heads of Service; Legal Services Team; Corporate Board

**Trade Union:** Not consulted

## Equality Impact Assessment – Stage One

<b>Name of item being assessed:</b>	West Berkshire Constitution – Part 3 Scheme of Delegation
<b>Version and release date of item (if applicable):</b>	May 2011
<b>Owner of item being assessed:</b>	Andy Day
<b>Name of assessor:</b>	Moira Fraser
<b>Date of assessment:</b>	19 August 2011

<b>1. What are the main aims of the item?</b>
The item is to approve the amendments to the section in the Council's constitution on the Scheme of Delegation.

**2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this.** (Please demonstrate consideration of all strands – Age, Disability, Gender, Race, Religion or Belief and Sexual Orientation.)

Group Affected	What might be the effect?	Information to support this.

**Further comments relating to the item:**  
 There are not believed to be any implications affecting any groups with this item. The item is to discuss the proposed amendments in the Scheme of Delegation in the Council's constitution. This means that Officers making decisions will be required to act accordingly to Council Policy already in place, and remain neutral when making a decision.

<b>3. Result</b> (please tick by double-clicking on relevant box and click on 'checked')	
<input type="checkbox"/>	<b>High Relevance</b> - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	<b>Medium Relevance</b> - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	<b>Low Relevance</b> - This needs to undergo a Stage 2 Equality Impact Assessment
<input checked="" type="checkbox"/>	<b>No Relevance</b> - This <b>does not</b> need to undergo a Stage 2 Equality Impact Assessment

**For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.**

<b>4. Identify next steps as appropriate:</b>	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	
Stage Two not required:	19/08/11

**Name:** Moira Fraser

**Date:** 19/08/11