

**Joint Report of the Presiding Member, Monitoring Officer and
Head of Democratic Services**

Council – 24 September 2015

AMENDMENTS TO THE COUNCIL CONSTITUTION

Purpose:	To make amendments in order to simplify, improve and / or add to the Council Constitution.
Policy Framework:	None.
Reason for Decision:	A decision of Council is required to change the Council Constitution.
Consultation:	Finance, Legal
Recommendation(s):	It is recommended that: 1) The changes to the Council Constitution as outlined in Paragraph 4 of the report together with any further consequential changes be adopted.
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1. Introduction

1.1 In compliance with the Local Government Act 2000, the City and County of Swansea has adopted a Council Constitution. A number of issues have arisen since adoption and in order to maintain the aims, principles and procedures set out in Articles 1 and 15 of the Council Constitution, it is proposed that the amendments set out below should be made to the Constitution.

2. Delegated Minor Corrections to the Council Constitution

2.1 There are no delegated minor corrections to the Council Constitution.

3. Amendments to the Council Constitution

3.1 This report outlines a number of suggested amendments to the Council Constitution. The amendments are within the following area of the Council Constitution:

a) Part 3 - Scheme of Delegation.

4. Scheme of Delegation - “Local Choice Functions”

- 4.1 The Local Government Act 2000 makes the Cabinet responsible for all functions of the Council save those functions specified in the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 as amended as not being the responsibility of the Cabinet.
- 4.2 Schedule II to the Regulations sets out those functions that may be (but need not be) the responsibility of the Cabinet. These functions are known as “Local Choice” functions. These functions are allocated to either Council or Cabinet and may be delegated to Officers.
- 4.3 The “Local Choice” functions have been added to by way of amendments to the legislation and the Scheme of Delegation needs to reflect those changes.
- 4.4 The current Local Choice Functions are set out within Paragraph 1.16 “Local Choice Functions, Part 3 “Scheme of Delegation” of the Council Constitution. These are appended as **Appendix A**.
- 4.5 The proposed Local Choice Functions are set out at **Appendix B**.
- 4.6 The proposed changes to the Local Choice Functions will necessitate the Key to the Scheme of Delegation table to be amended. The new key would be as follows:

PC	Planning Committee
CFO	Chief Financial Officer
Div Off (Taxis)	Divisional Officer (Taxis)
DoCS	Director of Corporate Services
DoP	Director of People
DoPI	Director of Place
HoER&P	Head of Economic Regeneration & Planning
HoFS	Head of Financial Services
HoH	Head of Highways
HoH&PP	Head of Housing & Public Protection
HoHR&OD	Head of Human Resources and Organisational Development
HoLDS&P	Head of Legal, Democratic Services & Procurement

5. Equality and Engagement Implications

- 5.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

6. Financial Implications

6.1 There are no specific financial implications associated with this report.

7. Legal Implications

7.1 There are no specific legal implications associated with this report. The amended version of the Council Constitution will be available at www.swansea.gov.uk/constitution

Background Papers: None.

Appendices:

Appendix A	Paragraph 1.16 “Local Choice Functions, Part 3 “Scheme of Delegation” of the Council Constitution;
Appendix B	Proposed - Paragraph 1.16 “Local Choice Functions, Part 3 “Scheme of Delegation” of the Council Constitution.

Appendix A

Current Version - Paragraph 1.16 “Local Choice Functions, Part 3 “Scheme of Delegation” of the Council Constitution

No	Function	Provision of Act or Statutory Instrument	Delegated To
J1	Calculation of council tax base in accordance with any of the provisions opposite.	(a) the determination of an amount for item T in Sections 33(1) and 44(1) of the Local Government Finance Act 1992;	Council
		(b) the determination of an amount for item TP in Sections 34(3), 45(3), 48(3) and 48(4) of the Local Government Finance Act 1992;	Council
		(c) The determination of an amount required for determining an amount for the item mentioned in paragraph (a) or (b) above.	Council
J2	Licensing functions.	Part 2 of the Licensing Act 2003 except Sections 6 and 53A to 53C.	HoH&PP / CD(E) / DoPI (save for the approval of Licensing Policy) / Statutory Licensing Committee
J2a	Licensing functions.	Part 2 of the Licensing Act 2003 Sections 53A to 53 C.	Statutory Licensing Committee
J3	Gambling		
J3a	A resolution not to issue Casino licenses.	Section 166 of the Gambling Act 2005. Cannot be delegated.	Council * Cannot be delegated
J3b	Three year licensing policy, which describes the principles to be applied in exercising the various licensing functions – Issuing of premises licenses, temporary use notices and a range of permits.	Section 349 of the Gambling Act 2005. Cannot be delegated.	Council * Cannot be delegated

No	Function	Provision of Act or Statutory Instrument	Delegated To
J4	Making orders in respect of gaming machines dis-applying Section 279 on 282 (1) of the Gambling Act 2005.	Section 284 of the Gambling Act 2005.	Council
J5	Duty to provide Licensing Authority Information	S29 Gambling Act 2005	HoH&PP / CD(E) / DoPI
J6	Gambling Commission Power for Other Exchange of Information	S30 Gambling Act 2005	HoH&PP / CD(E) / DoPI
J7	Power for Exchange of Information	S350 Gambling Act 2005	HoH&PP / CD(E) / DoPI
J8	Registration and Regulation of Small Society Lotteries	Part 5 Schedule 11 Gambling Act 2005	HoH&PP / CD(E) / DoPI
J9	Powers related to Public Rights of Way, Commons Registration and Village Greens.	Commons Act 1965; Commons Act 2006; Section 53 Wildlife and Countryside Act 1981; Section 26, 118, 119 of the Highways Act 1980.	PC
J10	Powers related to the Diversion, Extinguishment and Creation of public rights of way where no objections have been received, and all other functions relating to public rights of way not delegated to the Planning Committee.	Highways Act 1980; Countryside Act 1968; National Parks and Access to the Countryside Act 1949; Wildlife and Countryside Act 1981; Countryside and Rights of Way Act 2000; Road Traffic Regulation Act 1984.	HoER&P
J11	Family Absence	Local Government (Wales) Measure 2011 and The Family Absence for Members of Local Authorities (Wales) Regulations 2013.	Council

Appendix B

Proposed Version - Paragraph 1.16 “Local Choice Functions, Part 3 “Scheme of Delegation” of the Council Constitution

SCHEDULE 2 Functions which May be (but Need Not be) the Responsibility of an Authority's Executive Regulation 4

No.	Function	Delegation of Function
J1	Any function under a local Act other than a function specified or referred to in Schedule 1.	All Cabinet Members
J2	The determination of an appeal against any decision made by or on behalf of the authority.	Appeals and Awards Committee save: <ul style="list-style-type: none"> • In respect of approvals to drive school transport and licensing functions and matters of a licensing nature which will be heard by the General Licensing Committee.
J3	Functions in relation to the revision of decisions made in connection with claims for housing benefit or council tax benefit and for appeals against such decisions under section 68 of and Schedule 7 to the Child Support, Pensions and Social Security Act 2000.	CFO
J4	The making of arrangements in relation to appeals against the exclusion of pupils in maintained schools under section 52 of the Education Act 2002.	Independent Exclusion Appeals Panel
J5	The making of arrangements pursuant to section 94(1), (1A) and (4) of, and Schedule 24 to, the School Standards and Framework Act 1998 (admission appeals).	Independent Admission Appeals Panel
J6	The making of arrangements pursuant to section 95(2) of the School Standards and Framework Act 1998 (children to whom section 87 applies: appeals by governing bodies).	Independent Admission Appeals Panel
J7	The making of arrangements under section 20 (questions on police matters at council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority.	Cabinet

No.	Function	Delegation of Function
J8	The making of appointments under paragraphs 2 to 4 (appointment of members by relevant councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996 .	Cabinet
J9	The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under section 5 (best value reviews) of the Local Government Act 1999 .	Cabinet
J10	Any function relating to contaminated land.	DoPI
J11	The discharge of any function relating to the control of pollution or the management of air quality.	DoPI
J12	The service of an abatement notice in respect of a statutory nuisance.	DoPI
J13	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Council
J14	The inspection of the authority's area to detect any statutory nuisance.	DoPI
J15	The investigation of any complaint as to the existence of a statutory nuisance.	DoPI
J16	The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.	DoPI
J17	The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	DoPI
J18	Any of the following functions in respect of highways—	HoER&P & HoH: Save as to those matters to be referred to Planning Committee as set out in the paragraph entitled Public Rights of Way Matters in Part 3 of the Council Constitution.
	(a) the making of agreements for the execution of highways works;	

No.	Function	Delegation of Function
	<p>(b) the functions contained in the following provisions of Part III of the Highways Act 1980 (creation of highways)—</p> <ul style="list-style-type: none"> (i) section 25—creation of footpath, bridleway or restricted byway by agreement; (ii) section 26—compulsory powers for creation of footpaths, bridleways or restricted byways; 	
	<p>(c) the functions contained in the following provisions of Part VIII of the Highways Act 1980 (stopping up and diversion of highways etc)—</p> <ul style="list-style-type: none"> (i) section 116—power of magistrates' court to authorise stopping up or diversion of highway; (ii) section 117—application for order under section 116 on behalf of another person; (iii) section 118—stopping up of footpaths, bridleways and restricted byways; (iv) section 118ZA—application for a public path extinguishment order; (v) section 118A—stopping up of footpaths, bridleways and restricted byways crossing railways; (vi) section 118B—stopping up of certain highways for purposes of crime prevention etc; (vii) section 118C—application by proprietor of school for special extinguishment order; (viii) section 119—diversion of footpaths, bridleways and restricted byways; (ix) section 119ZA—application for a public path diversion order; 	

		<p>(x) section 119A—diversion of footpaths, bridleways and restricted byways crossing railways;</p> <p>(xi) section 119B—diversion of certain highways for purposes of crime prevention etc;</p> <p>(xii) section 119C—application by proprietor of school for special diversion order;</p> <p>(xiii) section 119D—diversion of certain highways for protection of sites of special scientific interest;</p> <p>(xiv) section 120—exercise of powers of making public path extinguishment and diversion orders;</p> <p>(xv) section 121B—register of applications;</p>	
	(d)	<p>the functions contained in the following provisions of Part IX of the Highways Act 1980 (lawful and unlawful interference with highways and streets)—</p> <p>(i) section 130—protection of public rights;</p> <p>(ii) sections 139—control of builders' skips;</p> <p>(iii) section 140—removal of builders' skips;</p> <p>(iv) section 140A—builders' skips: charges for occupation of the highway;</p> <p>(v) section 142—licence to plant trees, shrubs etc in a highway;</p> <p>(vi) section 147—power to authorise erection of stiles etc on footpath or bridleway;</p> <p>(vii) section 147ZA—agreements relating to improvements for benefit of persons with mobility problems;</p> <p>(viii) section 149—removal of things so deposited on highways as to be a nuisance etc;</p> <p>(ix) section 169—control of scaffolding on highways;</p>	

		(x) section 171—control of deposit of building materials and making of excavations in streets; (xi) section 171A and regulations made under that section—works under s169 or s171: charge for occupation of the highway; (xii) section 172—hoardings to be set up during building etc; (xiii) section 173—hoardings to be securely erected; (xiv) section 178—restriction on placing of rails, beams etc over highways; (xv) section 179—control of construction of cellars etc under street; (xvi) section 180—control of openings into cellars etc under streets, and pavement lights and ventilators;	
	(e)	exercising functions under section 34 of the Wildlife and Countryside Act 1981 (limestone pavement orders); and	
	(f)	exercising functions under section 53 of the Wildlife and Countryside Act 1981 (duty to keep definitive map and statement under continuous review).]	
J19	The appointment of any individual—		Cabinet – Leader subject to the Local Government and Housing Act 1989
	(a)	to any office other than an office in which he is employed by the authority;	
	(b)	to any body other than— (i) the authority; (ii) a joint committee of two or more authorities; or	
	(c)	to any committee or sub-committee of such a body,	
		and the revocation of any such appointment.	
J20	Power to make payments or provide other benefits in cases of Maladministration etc.		DoPI, DoCS DoP
J21	The discharge of any function by an authority acting as a harbour authority.		Cabinet

No.	Function	Delegation of Function
J22	Functions in respect of the calculation of council tax base in accordance with any of the following—	Council
	(a) the determination of an item for T in section 33(1) and 44(1) of the Local Government Finance Act 1992;	
	(b) the determination of an amount for item TP in sections 34(3), 45(3) 48(3) and 48(4) of the Local Government Finance Act 1992 ;	
	(c) the determination of an amount required for determining an amount for the item mentioned in paragraph (a) or (b) above.	
J23	Licensing functions in accordance with Part 2 of the Licensing Act 2003 except section 6 and 7 (2).	Statutory Licensing Committee/HoH&PP/DoPI
J24	Functions in respect of gambling under the following provisions of the Gambling Act 2005 —	
	(a) section 29—licensing authority information;	HoH&PP & DoPI
	(b) section 30—other exchange of information;	HoH&PP & DoPI
	(c) section 166—resolution not to issue casino licences;	Council
	(d) section 212 and regulations made under that section—fees;	Cabinet
	(e) section 284—removal of exemption;	Council
	(f) section 304—authorised persons;	DoPI
	(g) section 346—prosecutions by licensing authority;	DoP
	(h) section 349—three-year licensing policy	Council
	(i) section 350—exchange of information;	HoH&PP & DoPI
	(j) Part 5 of Schedule 11—registration with local authority.]	HoH&PP & DoPI
J25	Functions in respect of approval by a local authority under section 51 or a determination by a local authority under section 53 of the School Standards and Organisation (Wales) Act 2013 .]	Council where objections are made. Cabinet where there are no objections.
J26	Family Absence. Local Government (Wales) Measure 2011 and The Family Absence for Members of Local Authorities (Wales) Regulations 2013.	Council