

# Report of the Assistant City Solicitor to the meeting of Council on 14 July 2015

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**Subject:**

Review of the Constitution

**Summary statement:**

This report provides details of proposed amendments to the Constitution which were considered by Governance and Audit Committee at its meeting on 26 June 2015. The report seeks a decision from Council on the recommendations of Governance and Audit Committee.

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Dermot Pearson  
Assistant City Solicitor

**Portfolio:**

**Corporate**

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**Improvement Area:**



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## **1. Summary**

- 1.1 The contents of this report were considered by Governance and Audit Committee at its meeting on 26 June 2015. This report provides details of proposed amendments to the Constitution and the recommendations of Governance and Audit Committee, which were to recommend the proposals of the Assistant City Solicitor to Council, with the exception of a proposal relating to the Food Safety Service Plan. A separate report is being submitted to Council by the Strategic Director (Environment and Sport) concerning the adoption of the Food Safety Service Plan.

## **2. Background**

- 2.1 Article 14 of the Constitution requires the Monitoring Officer to maintain an up-to-date version of the Constitution and is authorised to make such amendments to the Constitution and related documents as may be necessary, but not including any changes of substance, to reflect and take account of changes in legislation, guidance, Council policy, decision of the Council and the Executive, and drafting changes and/or improvements.
- 2.2 Article 17 of the Constitution requires the Monitoring Officer to take steps to make himself/herself aware of the strengths and weaknesses of the Constitution and make recommendations for improvement. Changes to the Constitution can only be made following approval by the full Council or by the Monitoring Officer, as at paragraph 2.1 above.
- 2.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 make changes to the provisions which apply to disciplinary action against the Head of Paid Service, Monitoring Officer and section 151 officer. A separate report is being submitted to Council by the Deputy Monitoring Officer concerning the recommendations of the Governance and Audit Committee in that regard. It would not be appropriate for the Monitoring Officer to advise on those matters given the conflict of interest.
- 2.3 This report concerns proposals for amendments to the Constitution.

## **3. Proposed Amendments to the Constitution**

- 3.1 Appendix 1 to this report sets out proposed amendments to Part 3A of the Constitution (Council Standing Orders) to implement the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 in relation to recorded votes for budget decisions.
- 3.2 Appendix 2 to this report sets out proposed amendments to Article 4 (the Full Council) so as to remove the "Food Law Enforcement Plan" from the Policy Framework. The Plan has been replaced by the Food Safety Service Plan which the law does not require to be part of the Policy Framework. The Governance and Audit Committee does not recommend these proposed amendments to Council.
- 3.3 Appendix 3 to this report sets out proposed amendments to Part 3B (Access to Information Procedure Rules) and proposes the insertion of a new Part 4F

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(Protocol for the Filming or Recording of Council, Council Committee, Panel and Executive Meetings) in order to incorporate the Protocol adopted by full Council at its meeting on 19 May 2015 into the Constitution.

- 3.4 Appendix 4 to this report sets out the proposed amendments to Part 3D (Executive Procedure Rules) in relation to the recording and publication of executive decisions in order to secure compliance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 in the light of the Department for Communities and Local Government guidance "*Open and accountable local government - A guide for the press and public on attending and reporting meetings of local government*". In particular these amendments set out the requirements for the recording and publication of executive decisions made by individual executive members and by officers under delegated authority.
- 3.5 Appendix 5 to this report sets out the proposed amendments to Article 14 (Officers) in relation to the recording and publication of decisions made by officers which are not executive decisions in order to secure compliance with the Openness of Local Government Bodies Regulations 2014 in the light of the Department for Communities and Local Government guidance "*Open and accountable local government - A guide for the press and public on attending and reporting meetings of local government*". There are also proposed consequential amendments to reflect the proposed amendments set out in Appendix 4.
- 3.6 Appendix 6 to this report sets out the proposed consequential amendments to Part 3B (Access to Information Procedure Rules) which follow from the proposed amendments set out at Appendix 5.

#### **4. Financial and Resource Appraisal**

- 4.1 The resources required to amend the Constitution can be met from existing provision.

#### **5. Legal Appraisal**

- 5.1 As set out at section 3 above.

#### **6. Other Implications**

- 6.1 There are no equal rights, sustainability, community safety, Human Rights Act or trade union implications of this report.

#### **7. Not for Publication Documents**

- 7.1 None

#### **8. Recommendations**

- 8.1 Governance and Audit Committee recommend to Council the adoption of the proposed amendments to the Constitution set out in Appendices 1, 3, 4, 5 and 6 of this report.

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## 9. Appendices

- Appendix 1 Proposed amendments to Part 3A (Rules of Procedure)
- Appendix 2 Proposed amendments to Article 4 (the Full Council)
- Appendix 3 Proposed amendments to Part 3B (Access to Information Procedure Rules and the proposed insertion of a new Part 4F (Protocol for the filming or recording of Council, Council Committee, Panel and Executive Meetings))
- Appendix 4 Proposed amendments to Part 3D (Executive Procedure Rules)
- Appendix 5 Proposed amendments to Article 14 (Officers)
- Appendix 6 Proposed amendments to Part 3B (Access to Information Procedure Rules)

## 10. Background Papers

- 9.1 “Open and accountable local government - A guide for the press and public on attending and reporting meetings of local government”. (Department for Communities and Local Government). Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/343182/140812\\_Openness\\_Guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf)

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## **APPENDIX 1**

### **PROPOSED AMENDMENTS TO PART 3A (RULES OF PROCEDURE)**

#### **Current wording**

##### **25 Voting**

25.1 Members will vote by a show of hands. A member's vote will only be counted if s/he is sitting in a seat reserved for members.

25.2 Before a vote is taken under Standing Order 25.1, a group whip may require a bell to be rung for one minute to warn members.

25.3 Either before or immediately after a vote has been taken, any member may require a recorded vote that will supersede any vote taken under Standing Order 25.1. At least seven other members must support the request.

25.4 Before a recorded vote, a bell will be rung for one minute to warn members.

25.5 The recorded vote will be taken immediately afterwards and recorded in the minutes. A member's vote will only be recorded if the member is sitting in a seat reserved for members and answers 'Yes', 'No' or 'Abstention' immediately after her/his name is called.

25.6 Where immediately after a vote is taken any member of Council so requires, there shall be recorded in the minutes of the proceedings of the meeting whether that person cast her/his vote for the question or against the question or whether s/he abstained from voting.

#### **Proposed wording**

##### **25 Voting**

25.1 Members will vote by a show of hands. A member's vote will only be counted if s/he is sitting in a seat reserved for members.

25.2 Before a vote is taken under Standing Order 25.1, a group whip may require a bell to be rung for one minute to warn members.

25.3 Either before or immediately after a vote has been taken, any member may require a recorded vote that will supersede any vote taken under Standing Order 25.1. At least seven other members must support the request.

*25.3A All votes on motions, amendments and substantive motions in relation to the approval of the Council's budget or the setting of the Council Tax will be recorded votes taken in accordance with Standing Order 25.5.*

25.4 Before a recorded vote, a bell will be rung for one minute to warn members.

25.5 The recorded vote will be taken immediately afterwards and recorded in the minutes. A member's vote will only be recorded if the member is sitting in a seat reserved for members and answers 'Yes', 'No' or 'Abstention' immediately after her/his name is called.

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## **APPENDIX 2**

### **PROPOSED AMENDMENTS TO ARTICLE 4 (THE FULL COUNCIL)**

#### **ARTICLE 4**

##### **Current Wording**

###### Definitions

4.1 The 'policy framework' means:

4.1.1 The following documents:

4.1.1.1 The Community Strategy

4.1.1.2 The Corporate Plan (incorporating the Best Value Performance Plan)

4.1.1.3 The Children and Young People's Plan (incorporating the Youth Justice Plan)

4.1.1.4 The Crime and Disorder Reduction Strategy (incorporating the Drug Action Team Strategy)

4.1.1.5 The Food Law Enforcement Plan

4.1.1.6 The Housing and Homelessness Strategy

4.1.1.7 Local Development Framework

4.1.1.8 The West Yorkshire Local Transport Plan

4.1.1.9 The Treasury Strategy Document

4.1.1.10 The Annual Investment Statement

##### **Proposed Wording**

###### Definitions

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4.1.1 The following documents:

4.1.1.1 The Community Strategy

4.1.1.2 The Corporate Plan (incorporating the Best Value Performance Plan)

4.1.1.3 The Children and Young People's Plan (incorporating the Youth Justice Plan)

4.1.1.4 The Crime and Disorder Reduction Strategy (incorporating the Drug Action Team Strategy)

4.1.1.5 The Housing and Homelessness Strategy

4.1.1.6 Local Development Framework

4.1.1.7 The West Yorkshire Local Transport Plan

4.1.1.8 The Treasury Strategy Document

4.1.1.9 The Annual Investment Statement

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## APPENDIX 3

### PROPOSED AMENDMENTS TO PART 3B (ACCESS TO INFORMATION PROCEDURE RULES) AND THE INSERTION OF A NEW PART 4F (PROTOCOL FOR THE FILMING OR RECORDING OF COUNCIL, COUNCIL COMMITTEE, PANEL AND EXECUTIVE MEETINGS)

#### PART 3B

##### Current Wording

##### **8 Photography and Video Recordings of Meetings**

8.1 The taking of photographs and the video or sound recording of any meeting or part of a meeting of the full Council, the Executive, a committee or sub-committee, may take place.

8.2 Any person attending a meeting may take written notes of the proceedings.

##### Proposed Wording

#### **FOR THE FILMING OR RECORDING OF COUNCIL, COUNCIL COMMITTEE, PANEL AND EXECUTIVE MEETINGS**

##### **8 Photography and Video Recordings of Meetings**

8.1 The taking of photographs and the video or sound recording of any meeting or part of a meeting of the full Council, the Executive, a committee or sub-committee, may take place *subject to the Protocol for the Filming or Recording of Council, Council Committee, Panel and Executive Meetings at Part 4F of this Constitution.*

8.2 Any person attending a meeting may take written notes of the proceedings.

#### PART 4F

[The proposed new Part 4F of the Constitution will comprise the Protocol for the Filming or Recording of Council, Council Committee, Panel and Executive Meetings adopted by full Council at its meeting on 19 May 2015].



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## APPENDIX 4

### PROPOSED AMENDMENTS TO PART 3D (EXECUTIVE PROCEDURE RULES)

#### PART 3D

##### Current wording

##### **14 Record of Decisions**

14.1 As soon as reasonably practicable after a meeting of the Executive or any of its committees or after a decision has been made otherwise under the Executive Procedure Rules, the proper officer or, where s/he was not present, the person presiding at the meeting, shall ensure a written record of every decision taken at that meeting is made.

14.2 The record will include a statement of the reasons for each decision and any alternative options considered and rejected at the meeting.

14.3 The record of decisions shall be open to inspection by any person for up to six years after the date of the decision. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

##### Proposed wording

##### **14 Record of Decisions**

14.1 As soon as reasonably practicable after a meeting of the Executive or any of its committees or after a decision has been made otherwise under the Executive Procedure Rules, the proper officer or, where s/he was not present, the person presiding at the meeting, shall ensure a written record of every decision taken at that meeting is made.

*14.2 The written record must include:*

*(a) a record of the decision including the date it was made;*

*(b) a record of the reasons for the decision;*

*(c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;*

*(d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and*

*(e) in respect of any declared conflict of interest, a note of dispensation granted by the Council's Head of Paid Service.*

*14.3 As soon as reasonably practicable after an individual member has made an executive decision, that member must produce or instruct the proper officer to produce a written statement of that executive decision which includes the following information*

*(a) a record of the decision including the date it was made;*

*(b) a record of the reasons for the decision;*

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*(c) details of any alternative options considered and rejected by the member when making the decision;*

*(d) a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and*

*(e) in respect of any declared conflict of interest, a note of dispensation granted by the Council's Head of Paid Service.*

*14.4 As soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce a written statement which must include—*

*(a) a record of the decision including the date it was made;*

*(b) a record of the reasons for the decision;*

*(c) details of any alternative options considered and rejected by the officer when making the decision;*

*(d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and*

*(e) in respect of any declared conflict of interest, a note of dispensation granted by the Council's Head of paid service.*

*14.5 For the purposes of rule 14.4 above an executive decision includes decisions made under specific delegation from a meeting of a decision-making body but does not include decisions which are administrative or operational in nature.*

*14.6 After a meeting of a decision-making body at which an executive decision has been made, or after an individual executive member or officer has made an executive decision the proper officer must ensure that a copy of;*

*(a) any records prepared in accordance rules 14.2, 14.3 or 14.4; and*

*(b) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with rules 14.2, 14.3 or 14.4 or , where only part of the report is relevant to such a decision, that part, must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of Council and on the Council's website.*

*14.7 Rule 14.6 does not require the disclosure of exempt or confidential information.*

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## **APPENDIX 5**

### **PROPOSED AMENDMENTS TO ARTICLE 14 (OFFICERS)**

#### **Current Wording**

##### **Delegations of Functions to Officers by the Council and the Executive**

14.20 The Council and the Executive delegate to the Chief Executive and Strategic Directors, City Solicitor and Directors and any officer acting in her/his place in accordance with paragraph 14.25 the authority to:

14.20.1 Implement decisions of the Council, the Executive, the Council's committees and sub-committees in the discharge of the Council's functions within their area of responsibility, including policy, strategy, executive, regulatory and operational decisions.

14.20.2 Take all routine decisions including those of a professional, managerial, operational or regulatory nature in relation to the discharge of the Council's and the Executive's functions within their area of responsibility.

14.20.3 Take decisions in relation to the discharge of the Council's and the Executive's functions within their area of responsibility after consultation with the Leader of Council, Deputy Leader, appropriate Executive member with portfolio or chair of the appropriate committee or subcommittee.

14.20.4 In relation to matters not falling within paragraphs 14.20.1 to 14.20.3 above, submit a report and make recommendations as appropriate to the Council, the Executive, a committee or sub-committee.

14.20.5 Take decisions in relation to the discharge of any of the Council's or the Executive's functions in cases of emergency.

14.21 The officer shall always be entitled to refer a matter to the Executive or appropriate committee or sub-committee for decision where s/he considers it expedient to do so.

14.22 The officer may authorise an officer(s) to exercise, on her/his behalf, functions delegated to her/him. Any decision taken under this authority shall remain the responsibility of the relevant officer named in paragraph 14.20 above and must be taken in the name of that officer who shall remain accountable and responsible for such decisions.

14.23 In discharging delegated functions officers shall;

14.23.1 Comply with all relevant legislation.

14.23.2 Comply with the Constitution of the Council and relevant guidance

14.23.3 Have regard to Best Value principles and use the most efficient and effective means available, including the deployment of staff and other resources under their control and the procurement of other resources as may be necessary whether within or outside the Council.

14.23.4 Act in accordance with the policies, strategies and objectives of the Council.

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14.23.5 Have regard to the corporate interests of the Council.

14.24 Officers discharging functions, other than those which relate to her/his area of responsibility, under paragraph 14.20.5 above must report any action taken to the Executive, Health and Well-Being Board or Regulatory and Appeals Committee whichever is the appropriate body.

14.25 Where an officer referred to in paragraph 14.20 above is to be absent for any period, s/he or the Chief Executive, Strategic Director, Director or City Solicitor as appropriate, must nominate in writing another officer to act in her/his place during their absence.

### **Proposed Additional Wording**

#### ***Recording of decisions taken by officers under delegated authority***

*14.25A Where an officer makes an executive decision either in accordance with articles 14.20 to 14.25 above or in accordance with specific delegation from a meeting of a decision-making body, that decision must be recorded and published in accordance with rules 14.4, 14.5, 14.6 and 14.7 of the Executive Procedure Rules.*

*14.25B Where an officer makes a decision which is not an executive decision, either in accordance with articles 14.20 to 14.25 above or in accordance with specific delegation from a meeting of a decision-making body, the effect of which is to grant a permission or licence, to affect the rights of an individual; or to award a contract or incur expenditure which, in either case, materially affects the Council's financial position, the decision-making officer must produce a written record of the decision as soon as reasonably practicable after the decision has been made which must contain the following information—*

*14.25B1 the date the decision was taken;*

*14.25B2 a record of the decision taken along with reasons for the decision;*

*14.25B3 details of alternative options, if any, considered and rejected; and*

*14.25B4 where the decision was made under specific delegation from a decision-making body, the names of any member of the relevant body who has declared a conflict of interest in relation to the decision.*

*14.25C The duty imposed by article 14.25B is satisfied where, in respect of a decision, a written record, containing the the date the decision was taken and the reasons for the decision, is already required to be produced in accordance with statute, and does not require administrative and operational decisions to be recorded.*

*14.25D All written records produced in accordance with article 25B above, together with any background papers, must as soon as reasonably practicable after the record is made, be made available for inspection by members of the public—*

*14.25D1 at all reasonable hours, at the offices of the Council; and*

*14.25D2 on the Council's website,*

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*14.25E All written records produced in accordance with article 25B above must be retained and made available for inspection by the public for a period of six years beginning with the date on which the decision, to which the record relates, was made.*

*14.25F .Any background papers must be retained and made available for inspection by the public for a period of four years beginning with the date on which the decision, to which the background papers relate, was made.*

*14.25G Nothing in articles 14.25B, 14.25C, 14.25D, 14.25E or 14.25F requires the disclosure of exempt or confidential information*

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## APPENDIX 6

### PROPOSED AMENDMENTS TO PART 3B (ACCESS TO INFORMATION PROCEDURE RULES)

#### Current wording

9.9 Agendas and minutes of meetings, records of Executive decisions and open reports submitted to meetings of full Council, committees and sub-committees and to public meetings of the Executive and its committees shall be open to inspection by any person for up to six years after the date of the meeting.

#### Proposed wording

9.9 Agendas and minutes of meetings, records of Executive decisions and open reports submitted to meetings of full Council, committees and sub-committees and to public meetings of the Executive and its committees, *together with records of officer decisions which are required to be produced in accordance with Article 14*, shall be open to inspection by any person for up to six years after the date of the meeting.