

By: Alex King, Deputy Leader
Peter Sass, Head of Democratic Services

To: County Council – 21 July 2011

Subject: Proposed Changes to the Council's Constitution

Classification: Unrestricted

Summary: This report contains the details of three separate matters, which if approved, will involve changes to the Council's Constitution.

FOR DECISION

Recorded Votes at meetings of the Planning Applications Committee

1. Procedure Rule 2.20 of the County Council's Constitution sets out the rules for recording voting at committee meetings as follows:-

- (1) If any Member requests, the Chairman will call a vote on any recommendation or motion or amendment. The vote will be by a show of hands by Members of the Committee present, including substitute Members.
- (2) If the votes for and against are equal, the Chairman shall immediately declare if he is using his casting vote and, if so, whether for or against the proposal.
- (3) Immediately after a vote has been taken, an individual Member may ask that the way he cast his vote either for or against the proposal or to abstain be recorded in the minutes.
- (4) One-third of the voting Members present may require that the way all Members cast their vote for or against or to abstain shall be recorded in the Minutes: such a request must be made before the vote is taken.

The need to vary the procedure for the Planning Applications Committee

2. The determination of each planning application is a legal decision which is open to challenge either through an appeal to the Secretary of State or Judicial Review. On those occasions where the recommendations of the Head of Planning Applications Group have been agreed, the decision is readily defensible through reference to the professional advice given in the report and at the meeting.

3. The situation becomes more complex on those occasions when the Committee overturns the Head of Planning Applications Group's recommendations. Under such circumstances, the way in which each individual Member voted can become a matter of legal significance.

4. The Director of Governance and Law has clarified that the term “legal significance” relates to the need to be able to demonstrate that the voting was accurately recorded and that any necessary declarations of personal and prejudicial interests had been made. Individual Members are not personally liable for the actual way in which they cast their votes.

5. Consequently, the Director of Governance and Law has advised that the votes of each individual Committee Member (whether for, against or in abstention) should be recorded whenever the Committee votes against the Head of Planning Applications Group’s recommendation for permission or refusal.

6. This provision (underlined below) would supplement Procedure Rule 2.20 and would not replace it. Procedure Rule 2.20 (4) would be amended to read:

“One-third of the voting Members present may require that the way all members cast their vote for or against or to abstain shall be recorded in the Minutes; such a request must be made before the vote is taken. Additionally, the votes of each individual Member of the Planning Applications Committee (whether for, against or in abstention) will be recorded whenever the Committee votes against the Head of Planning Applications Group’s recommendation for permission or refusal of a planning application, together with the grounds and reasons for overturning the recommendation.”

7. This proposed provision has been reported to Planning Applications Committee on 12 April 2011 and (with its agreement) to Selection and Member Services Committee on 7 June 2011. Selection and Member Services Committee agreed that the Director of Governance and Law’s advice should be reported to the County Council for proposed adoption into the Constitution.

Proposed change of name of the Adult Social Services and Public Health Policy Overview and Scrutiny Committee

8. The Cabinet Member for Adult Social Care and Public Health has asked the County Council to consider re-naming the Adult Social Services and Public Health Policy Overview and Scrutiny Committee (POSC), in order to better reflect the title of his Cabinet portfolio.

9. The new title of “Adult Social Care and Public Health” is preferred, as it has a wider remit than Adult Social Services, which traditionally refers just to the adult social care function that the County Council delivers itself or commissions. As the Council changes in line with Bold Steps to Kent, this is an opportunity for the POSC to consider the how the Families & Social Care Directorate will contribute to deliver the wider ambitions of empowering citizens and tackling disadvantage. The wider remit also better reflects the responsibilities of the statutory officer role of the Director of Adult Social Services (DASS), who is accountable for delivering integrated support to communities and promoting social inclusion and wellbeing.

Statutory and Proper Officers

10. This report reviews the position of the statutory and proper officers within the authority following the implementation of Change to Keep Succeeding. Under the terms of the Constitution, responsibility for recommending to the Council the

designation of individual officers as statutory and proper officers rests with the Personnel Committee. The designations were last reviewed in April 2010.

11. The Local Government Act 1972 and other legislation require local authorities to make specific statutory appointments and designate proper officers to carry out particular roles and carry specific responsibilities.

12. Prior to the passing of the 1972 Act, it was the practice in Acts of Parliament to name, by reference to a post, a specific officer of the Council to deal with particular activities or to undertake a specific function on the council's behalf. However, in order to leave councils free to decide for themselves who should be responsible for particular tasks, the 1972 Act abandoned this concept. Instead, numerous references are made now in legislation to the term 'proper officer' who is, in fact, the officer designated by the Council to carry out a particular task. The officer can, of course, be a different officer for different purposes.

13. This report was considered at a meeting of the Personnel Committee on 18 May 2011 and it was agreed to recommend the revised schedule to the County Council. In addition, it is proposed that the schedule of statutory and proper officers is referenced in and appended to the Constitution and that there is a new Article 11.10 with the following wording:

"It is the function of the Personnel Committee to recommend to the Council the designation of individual officers as Returning Officer and statutory and proper officers and for the County Council to determine the recommendations of the Personnel Committee. The schedule of statutory and proper officers is appended to the Constitution (Appendix 2 Part 7)"

Proposed change to Article 13 of the Constitution (Finance, Contracts, Resource Management and Legal matters)

14. The Director of Governance and Law has proposed an amendment to Article 13.3, with the addition of the following words (underlined) at the end of the paragraph to better reflect the wording of s.222 of the Local Government Act 1972:

"The Monitoring Officer is authorised to institute, defend or participate in and settle any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where he considers that such action is necessary to protect or pursue the Council's interests or where he considers it expedient for the promotion or protection of the interests of the inhabitants of Kent

Recommendations:

The County Council is invited to determine the following recommendations:

- (i) That Procedure Rule 2.20 (4) be amended as recommended by the Director of Governance and Law (and set out in paragraphs 5 and 6 of this report) in relation to recorded votes at meetings of the Planning Applications Committee;

- (ii) That the Adult Social Services and Public Health Policy Overview and Scrutiny Committee be re-named as the Adult Social Care and Public Health Policy Overview and Scrutiny Committee with immediate effect, for the reasons set out in the report;
- (iii) That the designation of individual officers as statutory and proper officers of the Kent County Council be approved as set out in the attached table and that a new Article 11.10 be approved as set out in paragraph 13 above; and
- (iv) Article 13.3 of the Constitution (Finance, Contracts, Resource Management and Legal Matters) be amended as set out in paragraph 14 above

Peter Sass
Head of Democratic Services
(01622) 694002

STATUTORY AND PROPER OFFICERS

Any enactment, instrument or local statutory provision passed prior to the Local Government Act 1972	
Purpose	Officer
Any reference to the Clerk of a council which, by virtue of the Local Government Act 1972, is to be construed as a reference to the proper officer of the Council	Director of Governance & Law
Any reference to the Treasurer of a council which, by virtue of the Local Government Act 1972, is to be construed as a reference to the proper officer of the Council	Corporate Director of Finance and Procurement

Local Authority Social Services Act 1970		
Section	Purpose	Officer
6(A1)	Appointment as Director of Adult Social Services	Corporate Director of Families & Social Care

Agriculture Act 1970		
Section	Purpose	Officer
67(3)	Appointment as Agricultural Analyst	Director of Customer Services

Local Government Act 1972		
Section	Purpose	Officer
83	Witness and receive declarations of Members' acceptance of office	Head of Democratic Services
84	Receive written notice of Members' resignation from office	Head of Democratic Services
88(2)	Convene Council meeting for election to vacant office of Chairman	Head of Democratic Services
89(1)(b)	Receive notice of casual vacancy from two local government electors	Head of Democratic Services
96	Receive notices regarding pecuniary interests	Head of

		Democratic Services
100B(2)	Decide on the exclusion of reports and agendas from public inspection	Head of Democratic Services
100B(7)(c)	Decide whether copy documents supplied to Members should also be supplied to the press	Director of Governance & Law
100C(2)	Produce a written summary of proceedings taken by a committee in private	Head of Democratic Services
100D(1)	Compile a list of background papers to a committee report	Managing Director or Corporate Director responsible for preparing report
100D(5)(a)	Identify background papers that disclose facts or matters on which a report is based	Managing Director or Corporate Director responsible for preparing report
100F(2)	Identify which documents contain exempt information that are not available for Members	Head of Democratic Services
115(2)	Receive from officers any money and property committed to their charge in connection with their office	Corporate Director of Finance and Procurement
146(1)	Sign statutory declaration to enable transfer of securities in the event of a change of name of the Council	Corporate Director of Finance & Procurement
151	Responsibility for the administration of the Council's financial affairs (Chief Finance Officer)	Corporate Director of Finance & Procurement
191(2)	Receive applications from Ordnance Survey for assistance in surveying disputed boundaries	Corporate Director, Enterprise & Environment
210(6)-(7)	Exercise residual functions in relation to charities	Director of Governance & Law
225(1)	Receive and retain deposited documents	Director of Governance &

		Law
229(5)	Certify photographic copy documents	Director of Governance & Law
234(1)	Sign public notices, orders and other documents on behalf of the Council	Managing Director or other officer where the document to be authenticated relates to a delegated power
236(10)	Send copy byelaws to district councils	Director of Governance & Law
238	Certification of copy byelaws	Director of Governance & Law
Sch.12 Pt.I Para.4(2)(b)	Sign summonses to attend meetings	Head of Democratic Services
Sch.12 Pt.I Para.4(3)	Receive written notice that a Member wants a summons sent to an alternative address	Head of Democratic Services
Sch.29 Pt.I Para.4(1)(b)	Adaptation, modification and amendment of enactments	Director of Governance & Law
Sch.29 Pt.II Para.41(3)-(5)	Appoint interim superintendent registrars or interim registrars of births and deaths pursuant to the Registration Service Act 1953 Exercise powers provided by the local scheme of organisation of the Registration Service pursuant to the 1953 Act Prescription by the Registrar General of duties of proper officers under the Registration and Marriage Acts	Director of Customer Services

Local Government Act 1974		
Section	Purpose	Officer
30(5)	Give public notice of Local Government Ombudsman's report	Head of Democratic Services

Local Government (Miscellaneous Provisions) Act 1976		
Section	Purpose	Officer
41	Certifying copy resolutions and minutes of proceedings	Head of Democratic Services

Highways Act 1980		
Section	Purpose	Officer
59(1)	Certify that extraordinary expenses have been incurred in maintaining the highway by reason of damage caused by excessive weight	Corporate Director, Enterprise & Environment
193(3)	Certify that additional expenses have been incurred in the execution of wider than normal street works	Corporate Director, Enterprise & Environment
205(3)-(5)	Undertake duties as specified in the schedules in relation to private street works	Corporate Director, Enterprise & Environment
210(2)	Certify amendments to estimated costs and provisional apportionment of costs under the private street works code	Corporate Director, Enterprise & Environment
211(1) 212(4) 216(2)-(3)	Make final apportionment of costs as detailed in the schedules under the private street works code	Corporate Director, Enterprise & Environment
295(1)	Issue notice requiring removal of materials from non-maintainable streets in which works are due to take place	Corporate Director, Enterprise & Environment
321	Authenticate notices and other documents	Director of Governance & Law
Sch.9 Para.4	Sign plans showing proposed prescribed improvement or building lines	Corporate Director, Enterprise & Environment

Representation of the People Act 1983		
Section	Purpose	Officer

35	Appointment as Returning Officer for local elections	Managing Director
67(7)(b)	Receive declarations and giving public notice of election agents' appointments	Head of Democratic Services
81 and 89	Appropriate officer for the election of County Councillors	Head of Democratic Services
82(4)	Receive declarations and giving public notice of election agents' or candidates' election expenses	Head of Democratic Services
131(1)	Provide accommodation for holding election court	Head of Democratic Services

Weights and Measures Act 1985

Section	Purpose	Officer
72(1)	Appointment as Chief Inspector of Weights And Measures	Assistant Head of Trading Standards

Local Government Finance Act 1988

Section	Purpose	Officer
116(1)	Notify external auditor of meeting under the Act to consider a report from the Chief Finance Officer	Corporate Director of Finance & Procurement

Local Government and Housing Act 1989

Section	Purpose	Officer
2(4)	Hold the Council's list of politically restricted posts	Director of Governance & Law
4	Designation as Head of Paid Service	Managing Director
5(1)	Designation as Monitoring Officer	Director of Governance & Law
5(7)	Nomination to act as deputy in the absence of the Monitoring Officer	Principal Solicitor Community Services Team

		(Ian Clark)
15-17	Receive notification of the formation of a political group, changes in membership, names of group leaders and deputies, and group nominations to sit on committees	Head of Democratic Services
19	Maintenance of Register of Members' Pecuniary Interests	Head of Democratic Services

Food Safety Act 1990		
Section	Purpose	Officer
27(1)	Appointment of Public Analysts	Director of Customer Services
49(3)	Sign any document authorised or required to be given, made or issued by the Food Authority	Director of Customer Services

The Local Government (Committees and Political Groups) Regulations 1990		
Regulation	Purpose	Officer
	Notifications to and by the Proper Officer	Head of Democratic Services

Education Act 1996		
Section	Purpose	Officer
532	Chief Education Officer	Corporate Director, Education, Learning & Skills

Crime and Disorder Act 1998, section 115

Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007/1830

Regulation	Purpose	Officer
4(3)	Primary Designated Officer for information sharing	Director of Customer Services

Local Government Act 2000, section 22		
Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000		
Regulation	Purpose	Officer
3	Produce a written statement of executive decisions made at meetings	Managing Director
4	Produce a written statement of executive decisions made by individual Members	Managing Director
5	Make a copy of written statements of executive decisions and associated reports available for public inspection	Head of Democratic Services
6	Make available for public inspection a list of background papers	Head of Democratic Services
12	Publish key decisions of the Council	Head of Democratic Services

Local Government Act 2000, section 34		
Local Authorities (Referendums)(Petitions and Directions) Regulations 2000		
Regulation	Purpose	Officer
34	Publish the verification number of electors for the purpose of petitions under the 2000 Act	Director of Governance & Law

Regulation of Investigatory Powers Act 2000, section 30		
The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000		
Regulation	Purpose	Officer
2	Authorise the carrying out of directed surveillance or the conduct or use of a covert human intelligence source	Director of Customer Services, Chief Internal Auditor, Director of Governance & Law, Head of Planning Applications Group, Principal Planning Officer (Enforcement), Public Rights of Way Operations Manager, Public Rights of Way Officer (Enforcement), Head of Trading Standards (TS), TS Area

		Managers, TS Operational Manager
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**Regulation of Investigatory Powers Act 2000, sections 22(2)(b) and 25(2)
The Regulation of Investigatory Powers (Communications Data) Order 2010**

Regulation	Purpose	Officer
Sch. 2, Part 2	Grant authorization or give notice to obtain or disclose communications data for the purpose of preventing or detecting crime or of preventing disorder	Corporate Director Customer & Communities

Freedom of Information Act 2000

Section	Purpose	Officer
36	Qualified person to confirm or deny whether disclosure of information is likely to prejudice the effective conduct of public affairs	Director of Governance & Law

The Local Authorities (Standing Orders)(England) Regulations 2001

Regulation	Purpose	Officer
Sch. 1, Part II, Paras. 5 and 6	Functions in relation to notifying Executive of appointments, dismissals, etc.	Director of Governance & Law

Children Act 2004

Section	Purpose	Officer
18	Director of Children's Services	Corporate Director, Families and Social Care

Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007/1830

Regulation	Purpose	Officer
4(3)	Nominated officer to facilitate the sharing of information under an information sharing protocol	Director of Governance & Law

Local Democracy, Economic Development and Construction Act 2009		
Section	Purpose	Officer
31	Designation of Scrutiny Manager	Head of Democratic Services

Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children (DfE Guidance, March 2010)		
	Purpose	Officer
-	Local Authority Designated Officer (LADO)	Safeguarding Manager – Education and LADO

Department of Health – Health Service Circular: LAC (2002) 2		
	Purpose	Officer
-	Caldicott Guardian	Corporate Director, Families and Social Care

- In the event of the Managing Director (Head of the Paid Service) not being available to deal with matters for which s/he has been designated the proper officer, the Deputy Managing Director be authorised to act as proper officer in his/her absence.
- In the event of any other designated officer being unable to fulfill his/her duties as proper officer, his/her deputy be authorised to undertake such duties instead.
- Notwithstanding the above, a proper officer may at any time delegate or authorise other officers to perform the designated duties on his/her behalf.