

APPENDIX 2 – CONSTITUTIONAL AMENDMENTS

REVISED PARTS 1, 2 AND 3 OF THE CONSTITUTION TO GIVE EFFECT TO THE CHANGES TO THE REGULATORY FUNCTIONS



PART 1 – INTRODUCTION AND SUMMARY

That the existing paragraphs 1.16.1 and 1.16.2 be replaced with

Planning and Regulatory

- 1.16.1 The Council has established a Planning Committee that is responsible for the Council's statutory town and country planning and development control functions as set out elsewhere in the Constitution
- 1.16.2 The Council has established a Regulatory Committee that is responsible for the Council's statutory regulatory functions as set out elsewhere in the Constitution



PART 2 – ARTICLES

That the existing paragraph 2.8.2 be replaced with:

2.8.2 Regulatory Committee

Composition

- 2.8.2.1 The Regulatory Committee comprises 11 Councillors.

Role

- 2.8.2.2 The Regulatory Committee is responsible for the use of the Council's regulatory powers and the carrying out of Council's regulatory duties. The Committee's roles and functions are set out in the Functions Scheme at Part 3 section 6

- 2.8.2.3 The Council has also established a Regulatory Sub-Committee

2.8.3 Regulatory Sub-Committee

Composition

- 2.8.3.1 The Regulatory Sub-Committee comprises any three members of the Regulatory Committee drawn from the membership of the Regulatory Committee by the Chief Executive.

Role

- 2.8.3.2 The Regulatory Sub-Committee has the roles and functions as set out in the Functions Scheme at Part 3 section 6 and such functions as the Regulatory Committee may from time to time delegate to it



PART 3 - THE FUNCTIONS SCHEME

That the footnote to Table in paragraph 3.2.1 be added to the following section 2

Section 2 - Council Functions

This section explains the Council Functions and who carries them out. Council Functions are local authority functions which by law cannot be carried out by the Cabinet.

3.2.1 Delegation of Council functions

- 3.2.1.1 The Council has decided that the functions in Column 1 will be carried out by the body or officer in Column 2.

Column 1 What is the function	Column 2 Who can carry the function out
Adopting and changing the Constitution	Council Meeting Monitoring Officer (technical changes or those required by law only)
Approving or adopting the Policy Framework, the Budget and any application to the Secretary of State in respect of any Housing Land Transfer	Council Meeting only
Subject to the Urgency Procedure in the Access to Information Rules, making a decision contrary to the Policy Framework or the Budget, or part of it	Council Meeting only
Appointing the Leader of the Council	Council Meeting only
Setting the terms of reference of committees, deciding on their composition and allocating seats on them	Council Meeting only
Appointing representatives to outside bodies	Chief Executive as set out in the functions scheme, unless appointment retained by Council as a whole
Agreeing the Members Allowances Scheme	Council Meeting only
Changing the name of the area	Council Meeting only
Giving someone a civic honour or title	Council Meeting only
Planning and development control functions including enforcement for which the Council	Planning Committee/Chief Executive as set out in this

Column 1 What is the function	Column 2 Who can carry the function out
is responsible in Schedule 1 of the Functions Regulations	Functions Scheme
Hedgerow and tree preservation functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Planning Committee/Chief Executive as set out in this Functions Scheme
Rights of way functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Regulatory Committee/Chief Executive as set out in this Functions Scheme
Licensing and registration functions for which the Council is responsible in Schedule 1 of the Functions Regulations	Regulatory Committee/Chief Executive as set out in this Functions Scheme
Health and safety at work functions (other than those relating to the Council itself as an employer) for which the Council is responsible in Schedule 1 of the Functions Regulations	The Chief Executive
Elections functions in Schedule 1 of the Functions Regulations	Council Meeting Chief Executive(as Returning Officer and Electoral Registration Officer)
Byelaw Functions in Regulation 2 and Schedule 1 of the Functions Regulations	Council Meeting
Power to promote or oppose local or personal bills set out in Regulation 2 and Schedule 1 of the Regulations	Council Meeting only
Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal)	Council Meeting / Employment Panel/ Chief Executive as set out in the Functions Scheme
Duty to make arrangements for the proper administration of financial affairs	Council Meeting/Chief Executive/s.151 Officer as set out in the Functions Scheme and the Financial Procedure Rules
Power to appoint Officers for particular purposes (otherwise called the appointment of proper officers)	Council Meeting /Monitoring Officer as set out in the Functions Scheme
Approval of the appointment of the Chief Executive and duty to designate an Officer as the Head of Paid Service	Council Meeting only
Duty to designate Officers as the Monitoring Officer and the s 151 Officer and to provide staff	Council Meeting only
Duty to approve the Council's statement of accounts, income and expenditure and balance sheet, or record of payments	Council function delegated to the Audit and Governance Committee
Powers relating to overview and scrutiny	Council Meeting/Overview and Scrutiny Committee/Scrutiny Committees as set out in the Functions Scheme
Community governance review	Council Meeting only

Footnote:

Where in the above table it indicates that the functions are to be discharged by a Committee, an officer and/or another body, some elements of the function are discharged by an officer or other body on behalf of the Committee or the Council. The specific arrangements are explained elsewhere in the Functions Scheme

That the footnote to Table in paragraph 3.4.1 be added to the following section 4

Section 4 - Local Choice Functions

The Council must choose by law who carries out some functions (known as Local Choice Functions) set out in the Functions Regulations.

3.4.1 Allocation of functions

The Council has decided that the functions in Column 1 will be carried out by the body or officer in Column 2.

Column 1 What is the function	Column 2 Who can carry the function out
Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1.	Cabinet/Cabinet Member as set out in the Functions Scheme
The determination of an appeal against any decision made by or on behalf of the authority.	Cabinet/Chief Executive as set out in the Functions Scheme
The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools pursuant to section 52 of the Education Act 2002 and the subordinate legislation made under that section.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements pursuant to sections 94(1) (1A) and (4) of the 1998 School Standards and Framework Act (admissions appeals)	Cabinet/Chief Executive as set out in the Functions Scheme
The making of arrangements pursuant to section 95(2) of, and Schedule 25 to, the 1998 Act (children to whom section 87 applies: appeals by governing bodies).	Cabinet/Chief Executive as set out in the Functions Scheme
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.	Chief Executive after consultation with the Chairman of the Council
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/Chief Executive as set out in the Functions Scheme
The conducting of best value reviews in accordance with the provisions of any order for the	Cabinet/Chief Executive as set out in the Functions Scheme

Column 1 What is the function	Column 2 Who can carry the function out
time being having effect under section 5 (best value reviews) of the Local Government Act 1999.	
Any function relating to contaminated land.	Landowner responsibilities: Cabinet Member (Environment & Strategic Housing) Other Functions: Regulatory Committee
The discharge of any function relating to the control of pollution or the management of air quality.	Strategic and Policy: Cabinet Member (Environment & Strategic Housing) Other functions: Regulatory Committee
The service of an abatement notice in respect of a statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Cabinet/ Cabinet Member (Environment & Strategic Housing)
The Inspection of the authority's area to detect any statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The investigation of any complaint as to the existence of a statutory nuisance.	Cabinet/Chief Executive as set out in the Functions Scheme
The obtaining of information under section 330 of the Town and Country Planning Act 1990.	Cabinet/Chief Executive as set out in the Functions Scheme
The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Cabinet/Chief Executive as set out in the Functions Scheme
The making of agreements for the execution of highways works.	Cabinet/Chief Executive as set out in the Functions Scheme
The appointment of any individual (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.	Cabinet/ Chief Executive as set out in the Functions Scheme

Footnote:

Where in the above table it indicates that the functions are to be discharged by a Committee, an officer and/or another body, some elements of the function are discharged by an officer or other body on behalf of the Committee or the Council. The specific arrangements are explained elsewhere in the Functions Scheme

Section 6 – Other Functions

That the existing paragraph 3.6.2 in Section 6 of the Functions Scheme be replaced with the following new paragraph 3.6.2:

3.6.2 Regulatory Functions

The Regulatory Committee

3.6.2.1 The Regulatory Committee shall be responsible for the discharge of the Council's regulatory functions as specified in this section of the Functions Scheme

3.6.2.2 The Regulatory Committee's role is

- a. to oversee the discharge of the Council's regulatory functions and exercise of regulatory powers and duties of the Council including trading standards and consumer protection, animal health and welfare, environmental health (including Public Health, Control of Pollution (including noise), Contaminated Land, Environmental Protection (including statutory nuisance), Food Acts and related legislation, hackney carriage and private hire, licensable activities under the Licensing Act 2003, Gambling Act 2005, Local Government (Miscellaneous Provisions) Act 1982 (as amended), cinema, theatre and other public entertainment, house to house and street collections and other miscellaneous regulatory functions not within the remit of any other Council body
- b. to hear appeals against the refusal of any licences, decisions taken and conditions imposed in any regulatory matter by any officer or officer panel established for the purpose of carrying out or reviewing any action taken by any officer pursuant to the Chief Executive's delegated authority to discharge the Council's regulatory functions and to revoke any licence, permission consent or certificate granted by the Council, except where a separate statutory framework exists. The Regulatory Committee may exercise these functions by delegation to the Regulatory Sub-Committee.
- c. to consider and approve detailed regulatory policies and procedures other than those that require approval by Council or fall within the overall executive strategic and policy remit of the Cabinet and to ensure that the detailed regulatory policies and procedures provide a robust framework and criteria within which officers discharge the regulatory functions of the Council pursuant to the Chief Executive's delegated authority to discharge the Council's regulatory functions
- d. For the purposes of this section the regulatory functions within the remit of the Regulatory Committee include all licensing and registration functions in Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000 as amended from time to time and the miscellaneous functions in paragraphs 1-7 of Part I of those regulations relating to footpaths, bridleways and similar

matters and the Local Choice functions allocated to the Regulatory Committee in Section 4 of this Part.

The Regulatory Sub-Committee

3.6.2.3 The Regulatory Sub-Committee will be responsible for determining individual applications for licensable activities under the Licensing Act 2003 and the Gambling Act 2005 and will comply in all respects with the statutory provisions in that regard.

3.6.2.4 The Regulatory Sub-Committee will carry out such other functions as the Regulatory Committee delegates to it in accordance with this section of the Functions Scheme.

The Regulatory framework

3.6.2.5 The Regulatory Committee shall discharge its functions having regard to the overall constitutional regulatory framework within which the following bodies are responsible for discharging the following functions:

<i>Body</i>	<i>Responsible for:</i>
The Council	The approval of the Council's budget and policy framework The allocation of Local Choice functions and functions set out in the Schedule to the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001 The approval of licensing policy pursuant to the Licensing Act 2003
The Cabinet (or Cabinet Member)	To set the overall strategic and policy framework for the discharge of regulatory functions
Scrutiny Committee(s)	To undertake overview and scrutiny in relation to the Cabinet and Cabinet member's regulatory functions
The Regulatory Committee	To oversee the discharge of regulatory functions by officers To hear appeals against officer or officer panel decisions and revoke any licence To consider and approve detailed regulatory policies and/or procedures
The Regulatory Sub-committee	To determine applications under the Licensing Act 2003 and the Gambling Act 2005 To determine appeals and deal with revocation of licenses in accordance with any delegation of those function by the Regulatory Committee
The Officer Review Panel	To review any decision taken by an officer or officers and to ensure consistency of decision making in relation to the discharge of any regulatory functions
The Chief Executive (or any officer to whom the Chief Executive or any Director has delegated authority)	To fulfil all day to day operational regulatory activities To manage the discharge of regulatory functions To take all regulatory decisions except those specifically reserved to the Regulatory Committee or Regulatory Sub-Committee To establish a Regulatory Review panel of officers to review regulatory officer decisions

That the additional paragraph 3.8.2 (e) be added to Section 8 of the Functions scheme as shown below

Section 8 - Officer Functions

- 3.8.1 Except as set out in this Functions Scheme, the Chief Executive will exercise all functions on behalf of the Council.
- 3.8.2 Those functions are:
- a Council Functions as set out in Section 2 of the Functions Scheme which will be exercised in consultation with the Council
 - b Cabinet functions that are not reserved for Cabinet or individual Cabinet Member decision as set out in Section 3 of the Functions Scheme which will be exercised in consultation with the Leader of the Council or the relevant Cabinet Member
 - c Local Choice Functions as set out in Section 4 of the Functions Scheme which will be exercised in consultation with either the Cabinet or the Council depending on whether the Council has designated those functions as Council or Cabinet functions. Where such functions are designated Council functions but have been delegated to another Council body, the Chief Executive will exercise his delegated functions in consultation with that body
 - d other functions (other than overview and scrutiny functions) not specifically reserved to another Council body in Section 6 of the Functions Scheme
 - e the carrying out of all regulatory functions other than those specified as being the responsibility of the Regulatory Committee within Section 6 of the Functions scheme
 - f the proper functions of the Head of Paid Service including any formal statutory functions pursuant to that role including determining the management structure of the Council. That structure is included in Part 7 of this Constitution
 - g the functions of Electoral Registration Officer and Returning Officer which he/she undertakes independently of the Council
 - h leadership and effective management of all Council staff.
- 3.8.3 The Monitoring Officer and Chief Finance Officer will fulfil their respective statutory functions.
- 3.8.4 The Chief Executive (as Head of Paid Service), the Monitoring Officer and the Chief Finance Officer will work together constructively but will maintain their discrete roles as necessary to enable them to fulfil their statutory functions.
- 3.8.5 The Chief Executive may arrange for another officer of the Council to carry out any of the officer functions delegated to the Chief Executive.

- 3.8.6 For the purpose of carrying out any of these functions on behalf of the Chief Executive, the members of the Joint Management Team and other senior officers who are employed by NHS Herefordshire (the Primary Care Trust) are hereby appointed by the Council as officers of the Council to enable them to fulfil functions delegated to them by the Chief Executive.
- 3.8.7 Any officer of the Council who has been authorised by the Chief Executive to carry out any of the Chief Executive's functions of the Council may delegate those functions to other officers. In most cases, it is not appropriate for those delegations to be given to any officer below the level of Head of Service or Service Manager in the organisation structure.
- 3.8.8 The Chief Executive will maintain a Chief Executive's Scheme of Delegation detailing all relevant delegations, including the delegation of any proper officer functions (see Section 9 of the Functions Scheme).
- 3.8.9 The Chief Executive's Scheme of Delegation will be regularly reviewed and updated to ensure that it contains all relevant delegations.
- 3.8.10 The Chief Executive's Scheme of Delegation will be published as part of the Council's Freedom of Information Publication Scheme and will be presented to the Council, the Cabinet and the Overview and Scrutiny Committee annually for information.