

<b>Committee</b>	<b>Date</b>	<b>Classification</b>	<b>Report No.</b>	<b>Agenda Item No.</b>
General Purposes	18 October 2007	Unrestricted		
<b>Report of</b> Monitoring Officer, Isabella Freeman		<b>Title</b> Amendments to the Constitution		
<b>Originating Officer(s)</b>		<b>Wards Affected</b> Not Applicable		

## 1 SUMMARY

- 1.1 Two sets of Regulations have made amendments to the core functions and responsibilities regulations which are set out in their entirety in the Council's Constitution. The Monitoring Officer has effected the changes necessitated by the legislation under the powers contained in Article 15 of the Constitution and the Committee is asked to note the changes.
- 1.2 In respect of new non executive functions derived from gambling legislation, elections and smoke-free premises the Committee is invited to delegate the exercise of such functions to the Corporate Director, Communities, Localities and Culture.

## 2 RECOMMENDATIONS

2.1 Cabinet is recommended to:-

- (i) Note the changes to the non executive functions set out in the Constitution in consequence of The Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) and (Amendment No. 4) Regulations 2007 as shown at schedule 1 to this report.
- (ii) Authorise the Corporate Director, Communities, Localities and Culture to exercise the Council's powers in respect of the new functions referred to above.

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Local Government Act, 2000 (SECTION 97)  
List of "Background Papers" used in the Preparation of this report

Brief description of "background paper"

Name and telephone number of holder  
And address where open to inspection

### **3 BACKGROUND**

- 3.1 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 set out a comprehensive list of functions which are non executive functions. Additional regulations amending the core regulations have been made regularly ever since.
- 3.2 Part 3 of the Council's Constitution sets out all the functions specified in the regulations and whether the exercise of those functions has been delegated to a Committee or to an officer.
- 3.3 At its meeting on 13 June 2007, the Committee noted the changes to the functions as a result of The Local Authorities (Functions and Responsibilities) (England) (Amendment) (No. 2) Regulations 2007 and made provision for the functions to be exercised by a Committee or by officers.

### **4 NEW REGULATIONS**

- 4.1 On 10 July 2007 The Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007 were laid before Parliament. The provisions came into effect on 1 August and 1 September 2007.
- 4.2 The Regulations make amendments to the core regulations in relation to various Gambling Act functions by adding words to a number of provisions determined under enactments repealed by the Gambling Act 2005 to enable those provisions to apply where applications made under them had been made but not determined before the commencement of the repeal. In addition various new functions arising under the Gambling Act 2005 were added.
- 4.3 On 11 September 2007 The Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007 were laid before Parliament. The provisions came into effect on 2 October 2007.
- 4.4 The Regulations correct and update various references to listed buildings and conservation areas in the original 2000 Regulations and correct certain drafting errors in the 2007 Amendment No. 3 Regulations. Additional functions are specified regarding elections and in respect of smoke-free premises.
- 4.5 Under Article 15.01(5) the Monitoring Officer has power to make revisions to the Constitution to reflect changes in legislation and the changes to the list of functions and the statutory power authorising such functions as specified by the regulations have been added to the Constitution. These changes comprise the emboldened words in columns 1 and 2 of schedule 1 attached to this report.
- 4.6 In respect of the new functions the emboldened words in the third column are the recommendations for delegation from the Council to an officer, in every case the Corporate Director, Communities, Localities and Culture. Without delegation responsibility for the functions will remain with the Council, which is clearly

inappropriate for functions of an operational nature, and the Committee is recommended to so delegate.

## **5 COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 5.1 There are no financial implications arising from this report. Additional functions will be incorporated in the Directorate procedures and workload at no additional cost.

## **6 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 6.1 The legal implications are referred to in the body of the report.

## **7 EQUAL OPPORTUNITIES IMPLICATIONS**

- 7.1 None.

## **8 ANTI POVERTY IMPLICATIONS**

- 8.1 None.

## **9 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT (SAGE)**

- 9.1 None.

## **10 RISK MANAGEMENT IMPLICATIONS**

- 10.1 By making provision for the discharge of its non executive functions, the Council will ensure that it has fulfilled its statutory obligations.

## SCHEDULE 1

### **Part 3 - Responsibility for Functions**

#### **3.1 COUNCIL FUNCTIONS**

**3.1.1** These are local authority functions which cannot be the responsibility of the Executive. The following tables specify the delegation of Council functions to Committees and chief officers. Where the delegation is to be exercised by a Committee/chief officer, the matters reserved to the Committee are specified in the relevant Committee's functions and terms of reference set out in section 3.3.

##### **3.1.1.1 Functions relating to town and country planning and development control**

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>1. -</b>		
<b>2.</b>		
<b>3. -</b>		
<b>4. -</b>		
<b>5.</b> Power to determine application for planning permission.	Section 70(1)a and (b) and 72 of the Town and Country Planning Act 1990	Development Committee/ Corporate Director, Development and Renewal
<b>6.</b> Power to determine applications to develop and land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>7.</b> Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990	Development Committee/ Corporate Director, Development and Renewal
<b>8.</b> Power to decline to determine application for planning permission	Section 70A of the Town and Country Planning Act 1990	Development Committee/ Corporate Director, Development and Renewal
<b>9.</b> Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) and directions made thereunder.	Development Committee/ Corporate Director, Development and Renewal

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>10.</b> Power to determine application for planning permission made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (S.I. 1992/1492).	Development Committee/ Corporate Director, Development and Renewal
<b>11.</b> Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).	Development Committee/ Corporate Director, Development and Renewal
<b>12.</b> Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>13.</b> Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>14.</b> Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>15.</b> Power to grant consent for the display of advertisements.	Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992.	Development Committee/ Corporate Director, Development and Renewal
<b>16.</b> Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>17.</b> Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>18.</b> Power to serve a planning contravention notice, breach of condition notice or stop notice.	Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>18A.</b> Power to issue a temporary stop notice.	Section 171E of the Town and Country Planning Act 1990.	Corporate Director, Development and Renewal
<b>19.</b> Power to issue an enforcement notice.	Section 172 of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>20.</b> Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>21.</b> Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990.	Licensing Committee/ Corporate Director, Communities, Localities and Culture
<b>22.</b> Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c. 25) and paragraph 6(5) of Schedule 14 to that Act.	Development Committee/ Corporate Director, Development and Renewal
<b>23.</b> Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.	Development Committee/ Corporate Director, Development and Renewal
<b>24.</b> Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17, and 33(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990	Development Committee/ Corporate Director, Development and Renewal

FUNCTION	PROVISION OF ACT OR STATUTORY INSTRUMENT	DELEGATION OF FUNCTION
25. Power to determine applications for conservation area consent.	Section 16(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as applied by section 74(3) of that Act.	Development Committee/ Corporate Director, Development and Renewal
26. Duties relating to applications for listed building consent and conservation area consent.  The Planning (Listed Building and Conservation	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of <b>the Planning (Listed Building and Conservation Areas) Regulations 1990 (SI 1990/1519) and paragraphs 8, 15 and 26 of Department of the Environment Transport and the Regions Circular 01/01.</b>	Development Committee/ Corporate Director, Development and Renewal
27. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Development Committee/ Corporate Director, Development and Renewal
28. Power to issue enforcement notice in relation to demolition of <b>listed</b> building in conservation area.	Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Development Committee/ Corporate Director, Development and Renewal
29. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Development Committee/ Corporate Director, Development and Renewal
30. Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.	Development Committee/ Corporate Director, Development and Renewal

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>31.</b> Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Corporate Director, Development and Renewal

### 3.1.1.2 Licensing and registration functions (in so far as not covered by any other paragraph in this part)

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>1.</b> Power to issue licences authorising the use of land as a caravan site ("site licences").	Section 3(3) of the Caravan Sites and Control of Development Act 1960	Corporate Director, Development and Renewal
<b>2.</b> Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936	Corporate Director, Development and Renewal
<b>3.</b> Power to license hackney carriages and private hire vehicles.	(a) as to hackney carriages, the Town Police Clauses Act 1847 and section 15 of the Transport Act 1985; and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976; (b) as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.	Not applicable to London borough councils - Greater London Authority functions
<b>4.</b> Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.	Not applicable to London borough councils - Greater London Authority functions
<b>5.</b> Power to license drivers of hackney carriages and private hire vehicles.	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.	Not applicable to London borough councils - Greater London Authority functions



FUNCTION	PROVISION OF ACT OR STATUTORY INSTRUMENT	DELEGATION OF FUNCTION
6. Power to register pool promoters.	Schedule 2 to the Betting, Gaming and Lotteries Act 1963 <b>as saved for certain purposes by article 3(3)(c) of the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (hereafter called the Gambling Act Order).</b>	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
7. Power to grant track betting licenses	Schedule 3 to the Betting, Gaming and Lotteries Act 1963 <b>as saved for certain purposes by article 3(3)(d) and 4 of the Gambling Act Order.</b>	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
8. Power to license inter-track betting schemes	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963 <b>as saved for certain purposes by article 3(3)(e) of the Gambling Act Order.</b>	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
9. Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968 <b>as saved for certain purposes by article 4(2)(l) and (m) of the Gambling Act Order.</b>	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
10. Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976 <b>as saved for certain purposes by article 5(2)(a) and (3) of the Gambling Act Order.</b>	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture

FUNCTION	PROVISION OF ACT OR STATUTORY INSTRUMENT	DELEGATION OF FUNCTION
11. Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976 <b>as saved for certain purposes by article 5(2)(d) and (5) of the Gambling Act Order.</b>	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
12. Power to issue cinema and cinema club licences.	Section 1 of the Cinema Act 1985	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
13. Power to issue theatre licences.	Sections 12 to 14 of the Theatres Act 1968	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
14. Power to issue entertainments licences.	Section 12 of the Children and Young Persons Act 1933, section 52 of, and Schedule 12 to, the London Government Act 1963, section 79 of the Licensing Act 1964, sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions) Act 1982	If objection - Licensing Committee If no objection - Corporate Director, Communities, Localities and Culture
14A. Functions relating to licensing.	Sections 5 to 8 of the Licensing Act 2003.	Council/Licensing Committee/Licensing Sub-Committee/ Corporate Director, Communities, Localities and Culture
<b>14AA. Duty to comply with requirement to provide information to Gambling Commission.</b>	<b>Section 29 of the Gambling Act 2005</b>	<b>Corporate Director, Communities, Localities and Culture</b>

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>14AB. Functions in relation to exchange of information.</b>	<b>Section 30 of the Gambling Act 2005.</b>	<b>Corporate Director, Communities, Localities and Culture</b>
<b>14AC. Functions in relation to occasional use notices.</b>	<b>Section 39 of the Gambling Act 2005.</b>	<b>Corporate Director, Communities, Localities and Culture</b>
14B. Power to resolve not to issue a casino premises licence.	Section 166 of the Gambling Act 2005.	Licensing Committee
14C. Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises.	Section 304 of the Gambling Act 2005	Corporate Director, Communities, Localities and Culture
<b>14CA. Power to make Order disapplying Section 279 or 282 (1) of the Gambling Act 2005 in relation to specified premises.</b>	<b>Section 284 of the Gambling Act 2005.</b>	<b>Corporate Director, Communities, Localities and Culture</b>
14D Power to institute criminal proceedings.	Section 346 of the Gambling Act 2005	Assistant Chief Executive (Legal Services)
14E Power to exchange information	Section 350 of the Gambling Act 2005	Corporate Director, Communities, Localities and Culture
14F Functions relating to the determination of fees for premises licenses	The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (SI 2007/479)	Corporate Director, Communities, Localities and Culture
<b>14G. Functions relating to the registration and regulation of small society lotteries</b>	<b>Part 5 of Schedule 11 to the Gambling Act 2005.</b>	<b>Corporate Director, Communities, Localities and Culture</b>

### 3.1.1.4 Functions relating to elections

FUNCTION	PROVISION OF ACT OR STATUTORY INSTRUMENT	DELEGATION OF FUNCTION
1. Duty to appoint an electoral registration officer.	Section 8(2) of the Representation of the People Act 1983 (c. 2).	General Purposes Committee
2. Power to assign officers in relation to requisitions of the registration officer.	Section 52(4) of the Representation of the People Act 1983.	Chief Executive
3. Functions in relation to parishes and parish councils.	Part II of the Local Government and Rating Act 1997 and subordinate legislation under that Part.	Not applicable to London borough councils
4. Power to dissolve small parish councils.	Section 10 of the Local Government Act 1972	Not applicable to London borough councils
5. Power to make orders for grouping parishes, dissolving groups and separating parishes from groups.	Section 11 of the Local Government Act 1972	Not applicable to London borough councils
6. Duty to appoint returning officer for local government elections.	Section 35 of the Representation of the People Act 1983.	General Purposes Committee
7. Duty to provide assistance at European Parliamentary elections.	<b>Section 6 (7) and (8) of the European Parliamentary Elections Act 2002</b>	General Purposes Committee
8. Duty to divide constituency into polling districts.	<b>Section 18A to 18E of and Schedule A1 to the Representation of the People Act 1983.</b>	Chief Executive
9. Power to divide electoral divisions into polling districts at local government elections.	Section 31 of the Representation of the People Act 1983.	Chief Executive
10. Powers in respect of holding of elections.	Section 39(4) of the Representation of the People Act 1983.	Chief Executive
11. Power to pay expenses properly incurred by electoral registration officers.	Section 54 of the Representation of the People Act 1983.	Chief Executive
12. Power to fill vacancies in the event of insufficient nominations.	Section 21 of the Representation of the People Act 1985.	Not applicable to London borough councils
13. Duty to declare vacancy in office in certain cases.	Section 86 of the Local Government Acts 1972.	Chief Executive

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>14.</b> Duty to give public notice of a casual vacancy.	Section 87 of the Local Government Act 1972.	Chief Executive
<b>15.</b> Power to make temporary appointments to parish councils.	Section 91 of the Local Government Act 1972.	Not applicable to London borough councils
<b>16.</b> -		
<b>17.</b> Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	Section 10 of the Representation of the People Act 2000 (c. 2).	Chief Executive

### **3.1.1.6A Functions relating to smoke-free premises etc**

<b>FUNCTION</b>	<b>PROVISION OF ACT OR STATUTORY INSTRUMENT</b>	<b>DELEGATION OF FUNCTION</b>
<b>1.</b> Duty to enforce Chapter 1 and regulations made under it.	Section 10(3) of the Health Act 2006	Corporate Director Communities, Localities and Culture
<b>2.</b> Power to authorise officers	Section 10(5) of, and paragraph 1 of Schedule 2 to, Health Act 2000	Corporate Director Communities, Localities and Culture
<b>3.</b> Functions relating to fixed penalty notices.	Paragraph 13, 15 and 16 of and Schedule 1 to Health Act 2006  Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 (SI 2006/760).	Corporate Director Communities, Localities and Culture
<b>4.</b> Power to transfer enforcement functions to another enforcement authority.	Smoke-free (Premises and Enforcement) Regulations 2006 (SI 2006/3368).	Corporate Director Communities, Localities and Culture