

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 18 July and 28 September 2023. Attendances:

Councillor Glazier (Chair) (2)

Councillors Bennett (2), Bowdler (2), Collier (2) and Tutt (2)

1. Amendment to Constitution – Scheme of Delegation to Officers

1.1 The County Council's Scheme of Delegation provides the Director of Communities, Economy and Transport (CET) with authority to perform a number of functions and make certain decisions across the range of services that make up the directorate. National policy and legislative changes can result in new and amended functions that need to be performed by the CET directorate. To ensure that decisions are taken at an appropriate level, and are capable of being taken within prescribed timeframes, certain changes and additions are proposed to the Scheme of Delegation to Officers. Primarily this is to account for new certain new duties on the Council as a result of the Environment Act 2021.

Proposed amendments to the Scheme of Delegation

Local Nature Recovery Strategies

1.2 The Environment Act 2021 set a requirement for Local Nature Recovery Strategies (LNRS) to be prepared and implemented across the country. In broad terms, the LNRS will set a spatial strategy for how and where measures to achieve nature recovery will be achieved. The LNRS will inter-link with the soon to be mandatory requirement for new developments to deliver a minimum 10% increase in Biodiversity Net Gain (BNG). In April 2023, the Department for Environment, Food and Rural Affairs (Defra) published The Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023, which sets out the legislative procedure for preparing a LNRS. Defra has also announced that East Sussex County Council has been defined as a "Responsible Authority" for preparing a LNRS for the administrative areas of the County Council and Brighton & Hove City Council.

1.3 Defra expects that each Responsible Authority will have prepared a LNRS by March 2025. Production of the Strategy will involve a number of key stages, including a public consultation on a draft LNRS. Due to the relatively short timeframe to prepare a LNRS, it is considered essential that certain actions, tasks and decisions are delegated to the Director of Communities, Economy and Transport. Examples of this will include; publishing information relating to progress of the LNRS on a website; engaging with Supporting Authorities (District and Borough Council's, South Downs National Park Authority, Brighton & Hove City Council and Natural England) on the draft LNRS, and; publishing a draft LNRS for public consultation. It is therefore recommended that the following additional paragraph is included in Section xx of the Scheme of Delegation;

"To publish a consultation draft of a Local Nature Recovery Strategy and undertake all tasks under Regulations 4 to 12 inclusive, of The Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023, in preparing and publishing a draft LNRS. To make representations on Local Nature Recovery Strategies prepared by neighbouring authorities."

1.4 Approval of the final LNRS, as referred to in Regulations 13 to 19, will be an Executive decision and taken as a Lead Member/Cabinet decision.

Development Consent Orders

1.5 For Nationally Significant Infrastructure Projects (NSIPs), through the provisions of the Planning Act 2008 the planning process is dealt through Development Consent Orders (DCOs), rather than planning applications. DCOs are considered by the Planning Inspectorate, who prepare a report and make a recommendation to the relevant Secretary of State. The Secretary of State makes a decision on whether to grant or refuse the DCO. To date, no DCOs have been promoted within East Sussex, although there have been several DCOs promoted and determined within neighbouring authority areas. Both the proposed extension to the Rampion windfarm and the proposal from Gatwick Airport Limited for their Northern Runway Project are being dealt with through the DCO process.

1.6 The County Council is a statutory consultee for DCOs that relate to proposals within the county, as well as neighbouring authority areas. Opportunities to provide input and make representations on the proposals will be at the Pre-application, Acceptance, Pre-examination and Examination stages. Consultation periods at the Pre-application and Pre-examination stages will often be 6 weeks. At the Acceptance stage, consultees have 14 days to make a representation to the Planning Inspectorate as to whether they consider the consultation and engagement undertaken by the proponent to be adequate, or not.

1.7 In light of the above, it is clearly apparent that consultees, such as the County Council, will need to consider and respond to consultations in a timely manner. The Scheme of Delegation currently allows for the Director of Communities, Economy and Transport to respond to DCO consultations under paragraph 41, which states *“To respond on behalf of the Council as County Planning Authority, Highway Authority and/or Lead Local Flood Authority to consultations from government departments and other statutory and non-statutory organisations.”*

1.8 Given that additions are already being proposed, it is considered that this is an opportunity for explicit reference to be made to Development Consent Orders in the Scheme of Delegation. It is therefore proposed that the following additional paragraph is included after the existing paragraph 41;

“To make representations on Development Consent Orders at the Pre-application, Acceptance and Pre-Examination stages, and to further these representations and represent the County Council at the Examination stage.”

1.9 In some cases and in recognition of the strategic importance and interest in the proposals, outside of the formal consultation periods a report may be taken to Lead Member/Full Council in order to establish a general over-arching view on the proposals.

1.10 The Committee recommends the County Council to:

- ☆ agree to amend the Scheme of Delegation to Officers as set out in paragraphs 1.3 and 1.8 of this report.

2. Co-opted Independent Members on the Audit Committee

2.1 The *CIPFA Position Statement: Audit Committees in Local Authorities and Police 2022* has been published, replacing the 2018 edition. The statement represents CIPFA's view on Audit Committees and is the outcome of consultation with local authority representatives. It is expected that all local government bodies make the best effort to adopt the principles within the statement. The Department of Levelling Up, Housing and Communities support the guidance.

Independent Members of Audit Committees

2.2 In the section “Membership and the effectiveness of the audit committee”, CIPFA reference the role of the co-opted independent members (also known as lay members), in

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increasing the knowledge and experience base of the committee, whilst also reinforcing its independence. Whilst there is no legislative requirement for independent members in most English authorities (it is a legal requirement in Wales and in English combined authorities), CIPFA recommends the committee includes two co-opted independent members.

2.3 CIPFA's reasons for their recommendation are:

- To supplement the knowledge and experience of elected representatives in specific areas, such as audit or financial reporting;
- To provide continuity outside of the political cycle;
- To help achieve a non-political focus on governance, risk and control matters;
- Having two co-opted members rather than one will allow recruitment of members with different but complimentary knowledge and experience, increase resilience and continuity of the committee;
- Having two co-opted members shows a commitment to supporting and investing in the committee.

2.3 The role of the co-opted member will be the same as for Councillors on the committee. The only real difference would be where the committee has delegated decision-making responsibilities, which is not the case for the ESCC Audit Committee, in which co-opted members could not be able to participate on the decision making process.

2.4 It is normal practice to make a form of remuneration to recognise the value and time contributed to the committee, together with the reimbursement of expenses. If approved, this will need to be determined.

2.5 In a survey of 30 counties, through the Society of County Treasurers, there are 16 authorities who have 1 or two co-opted independent members, with North Yorkshire having 3. A further 8 authorities are either considering or actively recruiting to new co-opted independent members, with only 5 authorities taking no action at this time.

2.6 In order to assess whether there are particular knowledge and/or skills that an independent member could bring, the Audit Committee will undertake a self-assessment, in line with the CIPFA Position Statement.

2.7 The Audit Committee was consulted at its meeting on 7 July 2023, at which support was expressed for the proposal. A number of questions were raised which will need to be worked through should the proposal be approved, including:

- A detailed job description and person specification, aligned to any complimentary knowledge/experience requirements;
- Term of office – how long and how to maintain organisational memory;
- Impact of electoral cycle;
- Remuneration levels;
- Potential, at a future point, for an independent Chair of the Audit Committee.

2.8 The Committee recommends the County Council to:

- ☆ (1) agree to amend the size and composition of the Audit Committee to include two independent members to the Audit Committee, in line with the CIPFA Position Statement on Audit Committees 2022.
- (2) delegate authority to the Governance Committee to appoint the independent co-opted Members to the Audit Committee.

(3) amend the Constitution accordingly.

3. Appointments of Members to Committees, Sub-Committees and Panels

3.1 Following the by-elections of 27 July and 3 August 2023 a request was received to review the allocations to political and independent groups the places on and membership of committees, sub-committees and panels.

3.2 In appointing members to committees, sub-committees, most panels and some outside bodies, the Council must comply with section 15 of the Local Government Act 1989 and subsequent Regulations. These provide that places on committees must be allocated to political groups in proportion to the number of seats on the Council held by each group, unless there is agreement, without dissent, that the provisions of the Act should not be applied.

3.3 The allocation of places to party groups must, so far as is reasonably practicable, give effect to the following principles:

- (a) not all the seats on the body can be allocated to the same political group;
- (b) where more than half the members of the Council belong to one political group, that group shall have a majority on all committees, sub-committees, etc;
- (c) subject to (a) and (b) above, the total number of seats on the ordinary committees (including sub-committees) allocated to a political group reflects that group's proportion of the members of the Council;
- (d) subject to (a), (b) and (c) above, the number of seats on each body allocated to a political group reflects the proportion of the seats on the Council held by the group.

3.4 The rules require seats to be allocated on a proportional basis "so far as practicable" and inevitably there must be some rounding up and rounding down. It is open to the Council to review the size and number of committees and sub-committees at any time.

3.5 The principle in paragraph 3.3 (c) above applies to appointments to ordinary committees (including sub-committees). Accordingly, before considering the allocation of places to political groups the Committee will need to consider whether it wishes to recommend any changes in committees, including their size.

3.6 The party group leaders and independent members have been asked to let the Assistant Chief Executive have nominations to fill the places on committees, sub-committees, panels and other bodies covered in this report provisionally allocated to their group. The final list of nominations received will be circulated to members of the County Council prior to the annual council meeting, for approval by the Council.

Allocation of seats

3.7 The tables in Appendix 1 of this report have been compiled following consultation with the Group Leaders and show the revised allocation of seats for 2023/24 following the by-elections in July and August 2023. The proposals in relation to the ordinary committees and sub-committees, their total membership and the number of seats on each to which the groups will be entitled follows the principles set out in paragraph 3.3 above.

3.8 The proposed size of the Governance Committee has been increased to 6 to take into account the importance of having one member from each of the four largest political

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groups. Membership of this Committee normally includes the Group Leaders and better reflects the make-up of the Council.

Other Committees and Panels

3.9 There is no obligation in relation to other committees and panels to aggregate the total number of places and to adjust allocations so that the total number of places allocated to each group reflects its proportion of the members of the Council. It is proposed that places should be allocated on a proportionate basis which has been the custom for certain panels over many years.

3.10 Following consultation with Group Leaders these allocations and appointments remain unchanged and are set out in Appendix 2.

3.11 The Committee resolved to recommend to County Council the number of places on the Committees and Panels listed in Appendix 1.

3.12 The Committee recommends the County Council to:

- ☆ (1) increase the Membership of the Governance Committee to 6 members.
- (2) agree the allocation to political and independent groups the places on, and membership of the main committees in appendix 1 of this report the other committees and panels listed in Appendix 2 of this report; and
- (3) agree the appointment of Councillor Johnny Denis to the Governance Committee;
- (4) agree the appointment of Councillor Anne Cross to the Regulatory Committee;
- (5) agree the appointment of Councillor Charles Clark to the People Scrutiny Committee;
- (6) agree the appointment of Councillor Colin Swansborough to the People Scrutiny Committee;
- (7) agree the appointment of Councillor Brett Wright to the Place Scrutiny Committee.

4. Appointments to Outside Bodies

4.1 Following the by-elections of 27 July and 3 August 2023 a request was received to review the allocation of places to political and independent groups the places.

4.2 The County Council is invited to appoint members (in some cases non-county councillors are eligible) to serve on a wide range of outside bodies. Appointments are normally made for the lifetime of the County Council. In the case of appointments being made now the term will be to the date of the annual council meeting in the next County Council full election year unless otherwise indicated, although in most cases it is open to the County Council to change its representation at any time by resolution.

4.3 In appointing members to some outside bodies, places on committees must be allocated to political groups in proportion to the number of seats on the Council held by each

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group, unless there is agreement, without dissent, that the provisions of the Act should not be applied.

4.4 The political balance provisions apply to the East Sussex Fire Authority and the Conservators of Ashdown Forest. The table in Appendix 1 of this report has been compiled following consultation with the Group Leaders and shows the revised allocation of seats for 2023/24 following the by-elections in July and August 2023. The Independent Democrats are entitled to an additional place on the East Sussex Fire Authority and the Green Group are entitled to a place on the Conservators of Ashdown Forest.

4.5 In addition to a representative from each authority in Sussex, the Constitution of the Police and Crime Panel allows for additional local authority members to be appointed to address any imbalance in political proportionality. Any such appointments will be for a one-year period. In order to achieve political proportionality, it was proposed by West Sussex County Council, who support the Panel, that for 2023/24 East Sussex County Council appoint a Green as a second representative.

4.6 The Committee recommends the County Council to:

- ☆ (1) agree the allocation to political and independent groups of places on the East Sussex Fire Authority as set out below and to the appointment of Councillor Stephen Shing.
- (2) Agree the allocation to political and independent groups places on the Conservators of Ashdown Forest as set out below.

East Sussex Fire Authority	6 Conservatives 3 Liberal Democrats 1 Labour 1 Green 1 Independent Democrat
Conservators of Ashdown Forest	Four Conservative Members Two Liberal Democrat Members One Green Member One Labour Member

5. Review of the County Council's procedure for considering Notices of Motion

5.1 The Councils procedure for considering notices of motion is set out in paragraphs 36 to 39 of the Council Procedure Rules within the Constitution. In summary, the procedure is that the Chairman can either refer the motion to the next Council or, where the Chairman considers it appropriate, to a Committee or Lead Member. Where in the past the Chairman has referred a motion straight to Council, concerns have been raised by Members that there is insufficient background information for them to be able to make an informed decision. As a result, the usual practice that has been adopted is for the motion to be referred to the relevant Lead Member whereby an officer report is produced, and the Lead Member makes a recommendation to Full Council.

5.2 The Council is required to keep its governance arrangements under review. Accordingly, a review of the way in which the Council considers motions has been undertaken to ensure that the process is efficient, effective and fit for purpose. The aim of the review is to ensure that the Council has a process which balances the need for motions to be

debated in a timely manner, for all members who wish to speak on the matter to have the opportunity to do so and that sufficient information is provided to members to allow them to consider the issue.

Supporting Information

5.3 Group leaders were asked for their view on how they feel the existing arrangements are working. The feedback was mixed, and a range of views expressed.

- Some members were supportive of the current arrangements and stated, in particular, that members found it useful for a motion to be heard at a Lead Member and that a report is then produced which was a process members found useful.
- There was a desire for motions submitted before a Full Council meeting (by the deadline stated) to be heard at that Full Council meeting, and not delayed until the following meeting. It was considered that the deadline for notices of motion is usually 10 – 12 days before the Full Council meeting; it was felt that this should provide ample time for officers to prepare their responses for the Lead Member responsible. Usually the motion and the officers report are sent to a Lead Member meeting. It was considered that this is unnecessary as it doesn't usually change the result, or what goes to Full Council in any way, so is just a time waster.
- The process whereby the report of the LM becomes the substantive motion and then any amendments at Council are treated as amendments to this is considered confusing. It is considered that it would be far better to just propose amendments during the debate, and then Members vote on amendments and the original motion as proposed.
- That evidence that is cited in the motion submission is addressed specifically in the response to the motion, and that any challenges to this evidence is clearly laid out in response to the evidence points.
- The view was expressed that the person and seconder who submits the notice of motion should have the opportunity to introduce the motion, to speak at least once in the debate and to sum up and respond to those who have challenged the motion, addressing all suggestions of amendments. This means they would speak three times during the debate.

Proposed changes to the process

5.4 The Council's current process allows flexibility for how motions should be considered. The process of referring all motions to the Lead Member can result in delay, although it is also important to acknowledge that some motions relate to complex issues with a range of views and so the production of an officer report can take some time. The current practice can generate some confusion at Council where the Lead Member recommendation becomes the substantive motion on which amendments are then proposed.

5.5 It is proposed that the current approach of the Chairman of the Council determining the most appropriate route for the motion to take is retained. However, it is proposed that the practice be adopted whereby a motion that is referred straight to Full Council accompanied by an officer briefing to ensure that full context and background information is available for consideration by members (and members of the public) prior to the consideration of the matter. Where a motion is referred straight to Council, any amendments proposed during the debate would be treated as amendments to the original motion.

5.6 In relation members rights to speak, at present, when a motion is referred straight to Full Council, the member who submitted the motion is given a right of reply at the end of the debate, before either the Chair of the relevant Committee or the relevant Lead Member. Similarly, where a motion is referred to a Committee or Lead Member and then reported on to Full Council, the member who submitted the Notice of Motion is given a right of reply immediately before the Chair of the Committee or the relevant Lead Member (as applicable). In the event of any amendments to the motion, the Proposer of Motion would also have the right to speak on any amendments proposed.

5.7 The Committee recommends the County Council to:

- ☆ (1) agree the revised process for considering motions at Full Council (as set out in paragraph 3 of the report) and that the Constitution be amended accordingly.
- (2) That the deadline for submitted notices of motion for before a Full Council meeting be amended to 20 working days before that meeting date; and
- (3) That the Constitution be amended accordingly.

6. Amendment to the Constitution – Public Questions

6.1 Standing Order 42 of the Constitution sets out the arrangements for questions from members of the public. Paragraph 42.2 states that a question must be a genuine enquiry and not a statement. At each ordinary meeting a period of up to 30 minutes shall be set aside for questions from residents or by individuals who work in East Sussex.

6.2 Officers have been asked to consider whether the Constitution could be amended to bring greater clarity to an area of potential confusion relating to the asking of questions by members of the public at Full Council. Whilst the Constitution permits a questioner to ask a supplementary question experience has shown that members of the public often wish to provide some background and context and to their further question. This can give rise to some confusion as to whether or not this forms part of the question and is therefore permitted. It is a matter for the Council to determine arrangements for questions at Council meetings. There is variable practice across local authorities and the level of take-up by the public of the facility to ask questions also varies considerably across authorities.

6.3 The Committee was asked to consider whether members of the public wishing to ask a supplementary question at full council should be permitted to include a short statement as a prelude to their question. A time limit of up to three minutes has been suggested for both any introductory statement and the supplementary question. It is not proposed that any of the arrangements for written questions or the total allocated time set aside for questions should be amended.

6.4 The Committee was asked to consider a minor amendment to the Standing Orders, as follows:

- a) A new Standing order 42.6 be inserted as follows:

42.6 Questioners may include a short statement (which may include a point of clarification, brief contextualising background or summary rationale) as a preface to the question or any supplementary question. The questioner's statement and question combined should be limited to a maximum of three minutes.

- b) and existing standing orders 42.6 and 42.7 be renumbered accordingly.

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6.5 The Committee recommends the County Council to:

- ☆ (1) agree to the proposed amendment to the Constitution set out in paragraph 6.4 of the report.

28 September 2023

KEITH GLAZIER
(Chair)