

## Rother District Council

Report to	-	Cabinet
Date	-	2 December 2019
Report of the	-	Executive Directors
Subject	-	The Council's Constitution and UK Exit from the European Union (BREXIT)

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**Recommendation to COUNCIL:** That the Council's Constitution be amended by the insertion of the following clause, effective from the date at which the UK leaves the European Union:

*References to legislation including statutory instruments contained within this Constitution may have been superseded and therefore substituted by changes derived from the European (Withdrawal) Act 2018 ("the Act") and subordinate legislation introduced following the United Kingdom's exit from the European Union.*

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### Foreword

This report was considered by the Overview and Scrutiny Committee at its meeting held on 25 November 2019. The report has been reproduced in full for Cabinet; the comments of the Overview and Scrutiny Committee will be tabled at the meeting.

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### Introduction

1. As Members may be aware an officer European Union (EU) Exit Team has been established, under the direction of Dr Anthony Leonard, Executive Director acting as Lead Officer consisting of:
  - Head of Planning and Strategy;
  - Head of Environmental Services, Licensing and Community Safety;
  - ICT Manager;
  - Emergency Planning Officer; and
  - Human Resources Manager.
2. This working group meets on a weekly basis to consider communications received from the Government, the Sussex Resilience Forum, the Local Government association, and to keep under review the risk register and action log, tracking the Council's preparative activity for EU Exit.
3. The Audit and Standards Committee are being kept up to date on the Council's Strategic Risk Register in order to take into account the potential effects of the departure of the United Kingdom from the EU. The last report was made in September 2019 (Minute AS19/22 refers).
4. With the calling of the General Election to be held on Thursday 12 December, the current position with regard to the UK's exit from the EU remains uncertain at this time. Prior to the calling of the General Election an extension had already been agreed until 31 January 2020.

## The Council's Constitution

5. Whilst the exact timing is unknown, the EU (Withdrawal) Act 2018 (the EUWA) will end the supremacy of EU law in UK law and will convert directly applicable EU legislation into domestic law. The legislation will generally have the same effect that it had before the UK left the EU, unless or until it is changed by Parliament. Some however have been amended by Statutory Instruments made under the EUWA to correct "retained EU law" to ensure that the legislation will work properly once the UK has left the EU.
6. It is therefore necessary to ensure that the Council's Constitution remains robust and actions undertaken by officers in accordance with current EU legislation referenced within the Constitution, are not open to legal challenge. It is therefore recommended that the following clause be inserted into the current Constitution, effective from the date at which the UK leaves the EU:  
  
*References to legislation including statutory instruments contained within this Constitution may have been superseded and therefore substituted by changes derived from the European (Withdrawal) Act 2018 ("the Act") and subordinate legislation introduced following the United Kingdom's exit from the European Union.*
7. In accordance with the Council's Constitution, amendments to the Constitution are made via the Overview and Scrutiny Committee to Cabinet and Council. The Overview and Scrutiny Committee are requested to recommend this amendment to Cabinet and Council for approval.
8. If for any reason the UK does not leave the EU, this clause will not be inserted into the Constitution.

Malcolm Johnston  
Executive Director

Dr Anthony Leonard  
Executive Director

### **Risk Assessment Statement**

Failure to ensure that the Council's Constitution remains robust and legislatively sound post the UK exit from the EU could result in the Council being vulnerable to legal challenge.