

TO REVISE THE CHILTERNs CREMATORIUM JOINT COMMITTEE CONSTITUTION
Councillor Mrs Ward
Cabinet Member for Civic Amenities

Purpose

- 1.1 To consider proposed revisions to the constitution of the Chilterns Crematorium Joint Committee (CJCC):
 - a. To extend the powers of the joint committee to operate more than one crematorium;
 - b. To incorporate provisions in relation to disposal of assets.

2 Recommendations/for decision

Cabinet is recommended to:

- 2.1 Agree and adopt the revised constitution, subject to the agreement of the other constituent Authorities;
- 2.2 Delegate authority to the Lead Legal and Monitoring Officer to make any necessary minor amendments in conjunction with the Cabinet Member prior to final adoption.

3 Supporting information

- 3.1 The revised Constitution is attached as Appendix 1. The revised Constitution was approved by the CCJC at its meeting on 26 September 2018.
- 3.2 The proposed changes are flagged and explained by notes in the margin.
- 3.3 The revised constitution as attached will need to be approved by the Cabinets of each of the constituent authorities.

4 Options considered

- 4.1 It is essential that the Joint Committee has the necessary authority to operate and administer the new crematorium at Bierton as well as the existing one at Amersham, so there is no alternative option to revising the Constitution.

5 Reasons for Recommendation

- 5.1 The Chilterns Crematorium Joint Committee was established to operate and administer the crematorium built in Amersham. Now that the new crematorium at Bierton is under construction and is planned to open in Spring 2019 it is necessary to ensure that the Joint Committee's powers are extended to include Bierton (and any other crematoria that the Councils may develop in the future.)
- 5.2 The opportunity has also been taken to incorporate provisions in relation to disposal of assets and sharing of surpluses on dissolution, which are not addressed in the current version of the constitution.

6 Resource implications

- 6.1 There are no resource implications

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Dated.....2018

**CONSTITUTION OF
THE AYLESBURY VALE, CHILTERN AND
WYCOMBE DISTRICTS
CREMATORIA JOINT COMMITTEE**

Comment [SM@S1]: Suggested name change to be more generic and provide future flexibility.

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THIS SUPPLEMENTAL AGREEMENT is made the day of 2018

BETWEEN

AYLESBURY VALE DISTRICT COUNCIL of Council Offices ~~4 Great Western Street~~
Aylesbury Bucks HP20 2TW of the first part

Comment [SC2]: The Gateway,
Gatehouse Road, Aylesbury, Bucks HP19
8FF

CHILTERN DISTRICT COUNCIL of Council Offices King George V Road Amersham
Bucks HP6 5AW of the second part

WYCOMBE DISTRICT COUNCIL of Council Offices Queen Victoria Road High
Wycombe Bucks HP11 1BB of the third part

Together referred to in this Supplemental Agreement as the Participating Councils

WHEREAS

- (1) Pursuant to Section 101(5) of the Local Government Act 1972 and all other powers in that behalf then in force, the Participating Councils resolved in 2003 to establish a joint committee with effect from 20 March 2002 known as The Chilterns Crematorium Joint Committee (“the Joint Committee”) to manage and maintain the Chilterns Crematorium, Whielden Street, Amersham.
- (2) The Constitution and Terms of Reference of the Joint Committee were embodied in the agreed Heads of Terms and Terms of Reference incorporated into an Agreement dated 25 July 2014 (“the 2014 Agreement”)
- (3) A second crematorium is being developed by the Participating Councils at Bierton, near Aylesbury and it is necessary to vary the Constitution of the Joint Committee to extend its responsibilities to include the second crematorium, and any subsequent crematoria that may be developed in the future.
- (4) The Cabinet or Executive (as the case may be) of each of the participating Councils have now resolved pursuant to the terms of the 2014 Agreement and also to Section 101(5) of the Local Government Act 1972, Section 9EB of the Local Government Act 2000 and Regulations 9 and 11 of the Local Authorities

Comment [SM@S3]: Legislation
references updated

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(Arrangements for the Discharge of Functions) (England) Regulations 2012 (as amended) and all other powers in that behalf to enter into this Supplemental Agreement to vary the terms of the Joint Committee and the extent of the functions delegated to it.

NOW THIS DEED WITNESSETH as follows:-

(1) **1. IN CONSIDERATION** of all the statutory powers vested in the Participating Councils in this behalf it is hereby **AGREED AND DECLARED** that as from the date of this Supplemental Agreement the Constitution and Terms of Reference of the Joint Committee shall operate and be regulated by the Articles and Schedule hereof.

THE ARTICLES

1. Title of Joint Committee

With effect from the date of this Supplemental Agreement, the Joint Committee shall be known as the Aylesbury Vale, Chiltern and Wycombe Districts Crematoria Joint Committee.

2. Membership and Terms of Reference

The Membership and Terms of Reference of the Joint Committee shall be in accordance with the provisions set out in the Schedule hereto.

3. Term of Office

The term of office of any member of the Joint Committee shall commence on the date of their appointment to the Joint Committee by the Executive or Cabinet of which they are a member to the date that they cease to hold office as a member of the Executive or Cabinet that appointed them.

4. Casual Vacancies

As soon as is practicable after a casual vacancy arises the Executive or Cabinet of the relevant participating Council shall appoint a replacement who shall hold office for the remainder of the term of office of the member replaced.

5. Substitutes

Comment [SM@S4]: Not changed, apart from quorum requirement specified as one member from each authority.

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Any member who is unable to attend a meeting of the Joint Committee for any reason may appoint another member of the Executive or Cabinet of which he is a member as a substitute member provided notification of appointment is given to the Clerk or Deputy Clerk in writing (including by electronic means) before four o'clock on the date of the meeting in question and thereon the substitute member shall be entitled to attend that meeting only and (subject to the requirements relating to the declaration of interests contained in the Code of Conduct of the Council of which he is a member) shall be entitled to speak and vote on all items of business.

6. Powers of Joint Committee

The Joint Committee shall exercise all the functions and powers of the participating Councils in relation to the provision and maintenance of the crematoria pursuant to the Cremation Acts 1902 and 1952 other than the power to levy a precept, borrow money, acquire or dispose of land or employ staff.

Comment [SM@S5]: References to the Chilterns Crematorium have been replaced with generic plural

7. Lead Authority

(1) Chiltern District Council has lead authority responsibility in that it shall:-

- (i) Acquire and hold land and buildings at the direction and for the use of the Joint Committee;
- (ii) Insure and keep insured the crematoria and any additions and extensions thereto in full re-instatement value with an insurer of good repute
- (iii) Put and keep in place such other insurances including public and employers liability insurance covering such insured risks, levels of cover and excesses as Chiltern District Council acting reasonably consider prudent ;
- (iv) Appoint, employ and remunerate staff at the direction and for the use of the Joint Committee, including the following Office Holders :-
 - (a) The Clerk;
 - (b) The Treasurer;

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- (c) The Deputy Clerk; and
 - (d) The Deputy Treasurer.
 - (v) Provide legal, financial, personnel, technical and administrative support to the Joint Committee and without prejudice to the generality of the foregoing, provide or secure the provision of banking accountancy and audit facilities for the Joint Committee in accordance with best practice for the public sector;
 - (vi) At the direction and for the use of the Joint Committee enter into contracts and agreements for works goods and services; and
 - (vii) Compile and publish any statistics or local or national performance indicators as Chiltern District Council may be required by law to compile or publish in connection with the operation of the crematoria.
- (2) For the avoidance of doubt the insurance employment and other necessary and incidental costs and expenses directly or indirectly incurred by Chiltern District Council in the performance of the lead authority responsibilities shall be treated as an expense of the business and met out of the gross revenues of the crematoria.
- (3) Where Chiltern District Council enters into agreements or contracts for works goods and services at the direction and for the use of the Joint Committee it shall utilise and comply with its own procurement and audit procedures, including its adopted Contract and Financial Procedure Rules, subject only to any reference therein requiring officers to report to or obtain the approval or consent of the Council or the Executive being construed as if it were a reference to the Joint Committee.

Comment [SM@S6]: Added to list of services provided by lead authority.

Comment [SM@S7]: Reference to Best Value Reviews removed.

7. Minutes and Annual Report

The Joint Committee shall meet on not fewer than two occasions in any Council year and as soon as is practicable thereafter a copy of the minutes of the meeting shall be given to the Executive or Cabinet of each of the

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participating Councils. The Joint Committee shall also prepare and send an Annual Report on the discharge of its functions and powers to the Executive or Cabinet of each of the participating Councils as soon as practicable after the end of each financial year such report to include a copy of the final accounts for that year.

8. Procedural Rules

Meetings of the Joint Committee shall be conducted according to the rules of debate applicable for the time being to meetings of ordinary committees of Chiltern District Council as the same are set out in its Council Procedure Rules but subject to such minor modifications or amendments as are desirable or appropriate to facilitate the proper conduct of the business of the Joint Committee.

9. Members Codes of Conduct

In the conduct of the business of the Joint Committee Members shall comply with the Code of Conduct for Elected and Co-opted Members adopted by the participating Council of which they are a Member.

10. Access to Information

Notwithstanding the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, or any statutory modification or re-enactment thereof, the rights of the public to agendas, reports, background papers, meetings and the minutes of meetings of the Joint Committee shall be not less than that prescribed for meetings of Principal Councils by Sections 100A to E of the Local Government Act 1972 (as amended).

11. Scheme of Delegation to Officers

Pursuant to Section 101(5) of the Local Government Act 1972 the Joint Committee may from time to time make and publish a Scheme of Delegation to Officers to facilitate the efficient and effective management of the Crematorium. For the avoidance of doubt and subject only to any express limitation to the contrary in any Scheme of Delegation to Officers for the time being in force, Office Holders and the Crematorium Manager shall be deemed

Comment [SM@S8]: Legislation updated

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to have delegated authority to carry out such duties and responsibilities as are set out in their contracts of employment.

12 Capital Expenditure

Wherever possible, capital expenditure will be defrayed out of revenue. Any such expenditure in excess of £250,000 in any financial year will require the consent of the Executive or Cabinet of each of the Participating Councils. If it is impractical to defray capital expenditure out of revenue, the Executive or Cabinets of each of the Participating Councils will hold a joint meeting to consider the options for funding the capital expenditure proposed.

Comment [SM@S9]: Suggested increase from £50,000.

13 Surpluses and Losses

(1) Net surpluses may be retained by the Joint Committee to finance capital expenditure, redeem debt or maintain prudent contingency and/or repair and renewal funds. Any net surplus not so applied can be returned to the Participating Councils at the end of the financial year, following a decision of the Joint Committee when setting its budget, and shall take into account the advice of the Treasurer.

Comment [SM@S10]: Gives flexibility on annual review rather than applying fixed ratio.

(2) Net losses (after expenditure of all available contingency and or repair and renewal funds) in any financial year shall be borne by the Participating Councils in the proportion which the number of cremations from the area of each participating Council bears to the total number of cremations from all the participating Councils in that year.

14 Withdrawal and Dissolution

(1) Any of the participating Councils may withdraw from the Joint Committee on giving to the other participating Councils not less than 12 months prior notice in writing, such notice to expire on 31 March in any year;

(2) The Joint Committee may be dissolved by any two of the participating Councils giving not less than 12 months prior notice in writing to the other participating Council, such notice to expire on 31 March in any financial year.

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15 Financial Adjustment on Withdrawal or Dissolution

- (1) Should any of the Participating Councils withdraw from the new Joint Committee, the following provisions shall apply:-
- a. The Joint Committee will pay to a withdrawing Council its share of unapplied net surpluses for the year of withdrawal or the withdrawing Council will pay to the Joint Committee the agreed proportion of net losses as at the date of withdrawal (as the case may be).
 - b. Subject to sub-paragraph (a) above the withdrawing Council will have no liability for future losses or entitlement to share in future surpluses.
 - c. If the withdrawing Council is Chiltern District Council it will cease to act as lead authority and all staff employed at the direction of the Joint Committee in connection with the operation of the Chilterns Crematorium will transfer to one of the remaining participating Councils on their then current terms and conditions of employment including Pension Rights (the transferee Council to be determined by agreement between the remaining participating Councils and in default of agreement by Arbitration in accordance with Article 16 hereof).
 - d. If the withdrawing Council is Chiltern District Council and provided one of the remaining participating Councils has taken a transfer of staff in accordance with sub-clause (c) above, Chiltern District Council will continue to hold any land or buildings acquired for the purposes of the provision of Crematorium services, for the use of the joint Committee subject to the remaining Participating Councils indemnifying it against all costs losses, expenses, actions, claims and/or demands arising out of or in connection with the use of such land in connection with such services.
 - e. The remaining participating Councils will be entitled to share in future net surpluses or contribute to future net losses as set out in Article 13 above.
- (2) On any disposal of assets, any surplus after deduction of disposal costs and any other outstanding liabilities relating to the asset in question

Comment [SM@S11]: Would the Joint Committee like to consider transferring the assets at e.g. balance sheet values to the new lead authority?

Comment [SM@S12]: New provision, trying to allow for a council who has withdrawn but was a member for part of the time that the asset was held.

Comment [SM@S13]: Disposal of land carries the statutory requirement to achieve best consideration, so an independent valuation would need to be obtained.

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shall be divided between current and past Participating Councils in the same ratio as would have applied had the Joint Committee incurred a net loss in the financial year of the said disposal but adjusted to reflect the period during which each Participating Council was a member of the Joint Committee whilst the asset was held on the Joint Committee's behalf.

(3) Should the Joint Committee be dissolved:

- a. The assets held by the Lead Authority on behalf of the Joint Committee will be disposed of and any surplus after deduction of disposal costs and any other outstanding liabilities relating to the asset in question together with any accrued and retained surpluses from previous years held by the Lead Authority on behalf of the Joint Committee will be and distributed as set out in (2) above; and
- b. the Participating Councils or the remaining Participating Councils (as the case may be) will be entitled to their respective share of the net surpluses as shown in the final accounts for the year of dissolution or will contribute the agreed proportion of net losses (including redundancy costs) for that year (as the case may be);

Comment [SM@S14]: New provision to require disposal of asset on dissolution

16 Arbitration

All disputes or differences between the Participating Councils concerning the interpretation or application of these Articles that cannot be resolved by mutual agreement shall be referred to an independent Arbitrator appointed by the parties or in default of agreement by the President for the time being of the Law Society. The Arbitration will be conducted in accordance with the Arbitration Act 1996 and the arbitrator will act as an expert whose award shall be binding on the parties.

17 Variations

Any variations to these Articles or the Terms of Reference set out in the Schedule shall be agreed by the Executive or Cabinet of each of the Participating Councils and be recorded in writing.

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IN WITNESS whereof the Participating Councils have caused this Agreement to be executed as a Deed the day and year first before written

The Schedule

(Terms of Reference)

THE AYLESBURY VALE, CHILTERN AND WYCOMBE DISTRICTS CREMATORIA JOINT COMMITTEE

General

A joint committee established by Aylesbury Vale District Council, Chiltern District Council and Wycombe District Council ("the Participating Councils") to jointly manage the crematoria situate within their joint administrative area boundaries.

Membership, Chairmanship and Quorum

Number of Members	Six – two from each of the participating Councils
Substitute Members Permitted	Yes - but must be a member of the same Executive/Cabinet as the Substituted Member
Political Balance Rules apply	No
Appointments/Removals from Office	By a resolution of the Executive/Cabinet of the participating Councils
Term of Appointment	From the date of appointment to the date that they cease to hold office as a member of the Executive/Cabinet.
Casual Vacancies	To be filled by the Appointing Council's Executive/Cabinet (or by a member or committee of the Executive/Cabinet as each participating Council's executive arrangements may provide) for the remainder of the term of office of the member replaced
Restrictions on Membership	Appointees must be a member of the Executive/Cabinet of the participating Councils.

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Restrictions on Chairmanship/Vice-Chairmanship	None
Quorum	Three, one from each authority
Number of ordinary meetings per Council Year	Minimum of two
Extraordinary Meetings	The Chairman of the Joint Committee may call an extraordinary meeting at any time

Comment [SM@S15]: Additional requirement to ensure equal representation.

Terms of Reference

Pursuant to the Cremation Act 1902 as amended by the Cremation Act 1952, Section 101(5) and 102(1) of the Local Government Act 1972, Section 9EB of the Local Government Act 2000 and Regulations 9 and 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (as amended) and all other powers in this behalf, to exercise all the functions duties and powers of the participating Councils in connection with the provision and maintenance of crematoria, other than the power to appoint and remunerate staff, levy or issue a precept, borrow money or hold land.

Comment [SM@S16]: References corrected and updated

Delegations

The matters referred to in the Terms of Reference are fully delegated subject to the terms, restrictions and reservations set out in the Constitution of the Joint Committee.

The Common Seal of Aylesbury Vale District Council was hereunto affixed in the presence of

Chairman of the Council

Head of Legal Services

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The Common Seal of Chiltern

District Council was hereunto affixed
in the presence of

Director of Resources

The Common Seal of Wycombe

District Council was hereunto affixed
in the presence of:

Chairman

District Solicitor

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