

Cheshire East Council – New Constitution

Explanatory note to new Part 2 (a) to (d) Responsibility for Functions

(Version 2 28.09.17)

This Part is a fundamental rewriting of what was previously in (part of) Part 2 and 3 of the old constitution – Introductory Chapters and Responsibilities for Functions. It would not be helpful to track the changes on to the original constitution as the new Part adopts a very different approach. **Members have asked that a report be produced which tracks the changes that have been made to this part of the Constitution, and it is suggested that officers produce such a report prior to the draft being finalised.**

The approach adopted is as follows

1. All the words coloured blue indicate where there will be hyperlinks to allow access to other parts of the document and/or to other documents e.g. Local Schemes of Delegation, the Proper Officer Register etc.
2. Any financial thresholds have been highlighted yellow as these remain subject to an overall review across the new Constitution.
3. There are a few queries where the document needs to avoid acronyms/be clearer on what a certain area of responsibility means.
4. The structure and content of the document is as follows:-

Section	Title	Contents
A	Diagram of decision making structure and introduction to decision making	<p>The diagram will need to be created.</p> <p>The Introduction sets out principles of good decision making previously in Part 2 but with hyperlinks to aid navigation of the document</p>
B	Full Council	<p>Sets out the arrangements for Full Council, pulling all previous references which were spread over the constitution into one place.</p> <p>The mayoral code of practice is accessed through a link from here as is the guidance on the role of a Chair.</p>
C	Cabinet	<p>Sets out the roles and functions of the cabinet collectively and individual portfolio holders. The role of the cabinet and the portfolio holders has been redrafted to make their democratic leadership role clearer – this has drawn on comments made as part of this project. The individual portfolio areas have not been changed.</p> <p>There are hyperlinks to aid navigation around the document and the layout should be clearer to follow with consistent drafting</p> <p>The role of Deputy Cabinet Members has been amended to reflect concerns at the previous drafting</p> <p><u>Portfolio Holder Decisions</u></p> <p>The requirement for an individual portfolio holder to hold a meeting to</p>

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		<p>make a decision has been removed save for Key Decisions. This approach was supported at the Sub-Committee meeting of 29 September but Members have raised concerns that removing the requirement for Portfolio Holder meetings for non-key decisions could make it more difficult for Members to scrutinise in advance the decisions that are being made.</p> <p>It was suggested that an internal procedure be agreed to determine how information is circulated in advance of Portfolio Holders' decisions being taken. The Council should note that as a matter of law, only Key Decisions need to be publicised in advance of being taken (under Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012). We understand that Key Decisions will continue to be made with 28 clear days' notice and be identified in the Forward Plan.</p> <p>Members have suggested that they would like to have advance notice of all decisions. This is an administrative procedure for the Council to determine and does not necessarily need to be recorded in the Constitution (but it may be helpful to include it).</p> <p>There is no legal requirement to circulate details in advance of non-key decisions being made, but the Council should decide whether it wishes to adopt such a procedure, which could include publishing details of non-key decisions in the Forward Plan.</p> <p><u>Communication of Executive Decisions that have been taken</u></p> <p>Members have suggested that a list of all executive decisions be circulated once or perhaps twice a week following decisions being taken by Portfolio Holders. The current requirement is for an email within 48 hours. Some members would prefer to receive bulk rather than individual decisions within 48 hours of being made.</p> <p>The Constitution needs to reflect the requirements for recording decisions set out in Regulation 13 of the 2012 Regulations. All executive decisions taken by Members and Officers need to be recorded in this way, regardless of whether they are Key Decisions or not.</p> <p>The Council needs to decide whether it wants to adopt a procedure for the circulation of information which goes beyond recording requirements of Regulation 13.</p> <p><u>Call-in of Decisions</u></p> <p>Members have requested that call-in be retained for all decisions, rather than just for Key Decisions. This can be reflected in the draft Constitution, although it should be noted that local crime and disorder matters are excluded from call in, as are the following matters are under Regulation 3 of the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012/1022:</p> <ol style="list-style-type: none"> 1. Matters relating to planning decisions; 2. Matters relating to licencing decisions;

Section	Title	Contents
		<p>3. Matters relating to a person who has recourse under law to an appeal or review of the matter.</p> <p>4. any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for inclusion in the agenda for the Overview and Scrutiny Decision.</p>
D	Committees	<p>There has been extensive redrafting of this section, whilst not changing the fundamental allocation of responsibilities. Hyperlinks have been used and the layout made easier to follow.</p> <p>The terms of reference of the Licensing Committee have been completely redrafted to move away from lists of legislation to more clarity on which body decides which function. Again – the fundamental allocation of decision aiming has not been changed – officer comments have been taken into account.</p> <p>The terms of reference of the Audit and Governance Committee have been redrafted to edit the lengthy list of activities (most of which were a natural part of the Committee's brief and did not need stating). The co-opted member has been made non-voting because of concerns at the legal basis for this.</p> <p>The code of conduct for the HWB has been added as a link.</p> <p>The terms of reference and constitution of the Shared Services Joint Committee have been included. It is understood that both of these are under review, and it may be that they need to be updated in due course. They currently appear in their 2009 form.</p> <p><u>Strategic Planning Board</u></p> <p>Members have commented that the Strategic Planning Board no longer nominates Councillors to sit on the Northern and Southern Planning Committee. Reference to this has been removed from the draft Constitution.</p> <p>It was also noted that the use of the term "call-in" to refer to the challenge of a decision to delegate a planning decision to an officer is misleading. The term call-in is a specific term relating to the functions of the Overview and Scrutiny Committee.</p> <p>It was suggested that an alternative phrase be adopted. "Member Challenge", or "Referral" were proposed by members, and Bevan Brittan could suggest further alternatives. The Council should confirm the term it wishes to adopt.</p> <p><u>Investigatory and Disciplinary Committee</u></p> <p>A Cllr raised a concern that in a previous re-draft (April 2017) of the Constitution a sentence had been added to the Terms of Reference to the Investigatory and Disciplinary Committee which gives the MO and the Chair of the staffing Committee the ability to "filter out and deal with allegations which are clearly unfounded, trivial or can be dealt with under some other procedure".</p> <p>Bevan Brittan notes that similar wording appears in the Chief</p>

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		<p>Executives' National Salary Framework and Conditions of Service, dated 13 October 2016.</p> <p>Bevan Brittan recommends that the decision is delegated to the MO, unless the complaint is against the MO, in which case the delegation should be to the chief executive. In both cases we advise that the delegation should be "in consultation with the Chair of the IDC".</p>

There are some missing sections from this Part of the Constitution that we are not able to develop but need urgent consideration and drafting.

- Alternative Service Delivery Vehicles – what are the constitutional arrangements for these i.e.
 - Who makes decisions as the shareholder of these bodies
 - Where is the commissioning role for the contracts with these bodies
- Delegation of Functions to third parties - are there contracted out functions (perhaps to the ASDVs or other bodies? If so, these should be listed.
- Please confirm whether there are any other Joint Committees?

We have left placeholders for these missing areas.