

CHESHIRE EAST

GOVERNANCE AND CONSTITUTION COMMITTEE

Date of meeting: 8th September 2008
Report of: Interim Monitoring Officer
Title: Shadow Council's Constitution: potential changes

1.0 Purpose of Report

- 1.1 To report to the Committee upon potential changes to the Shadow Council's Constitution.

2.0 Decision Required

- 2.1 For consideration to be given to whether changes should be made to the Shadow Council's Constitution.

3.0 Financial Implications for Transition Costs

- 3.1 There are no financial implications for Transition Costs.

4.0 Financial Implications 2009/10 and beyond

- 4.1 There are no financial implications 2009/10 and beyond.

5.0 Legal Implications

- 5.1 If the Committee decides that changes should be made to the Shadow Council's Constitution, these will need to be recommended to the Full Shadow Council.

6.0 Risk Assessment

- 6.1 No risks appear to arise from the potential changes to the Constitution.

7.0 Background

- 7.1 At its first meeting on 13th May 2008, the Shadow Council adopted its Constitution. In doing so, it accepted a recommendation of the Cheshire East Joint Committee which, in turn, had appointed a Sub Group of Members to carry out detailed work on the Constitution.
- 7.2 During debate on the draft Constitution at the final meeting of the Joint Committee, a number of issues were raised which it was agreed would be given further thought at a later date.

- 7.3 At the first meeting of the Governance and Constitution Committee on 14th July, the Committee asked for a report to be presented to its next meeting on these issues. The following is a list of the issues raised, together with comment.
- 7.2 Officer Code of Conduct: A question was raised at the Joint Committee meeting as to when an officer Code of Conduct would be included in the Constitution. Whilst the unitary Council's constitution will contain an Officer Code of Conduct, it was thought that it would not be appropriate to prepare a similar document for the Shadow Council, since only a very small number of officers would be employed during the shadow period. Some officers eg a Head of Paid Service will, of course, be employed by the Shadow Council, but they will be employed subject to the usual terms and conditions of employment, and general employment law. **In the circumstances, and in view of the limited period of employment of such a small number of individuals, it is felt that the preparation of an Officer Code of Conduct for the Shadow Council's Constitution would not be the best use of resources.**
- 7.3 Key Decisions-use of a financial threshold: The Shadow Council's Constitution uses the statutory definition of Key Decision:

The statutory definition, as contained in paragraph 8 of Part III of the Local Authorities (Cabinet Arrangements) (Access to Information) (England) Regulations 2000, is as follows:-

"an executive decision which, is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority."

In addition to the above criteria, some local authorities use a financial threshold, above which a decision of the Executive automatically becomes a Key Decision, which must then be published on the Forward Plan. There are some advantages with this approach in that it provides officers with certainty as to the significance of financial decisions.

However, in view of the fact that only very few operational decisions will be being made by the Shadow Council's Cabinet during the Shadow Period, it is suggested that the above definition of Key Decisions should be adequate.

It is clear, however, that consideration will need to be given to the definition of Key Decisions for the new unitary Council, and this will form part of another report to the Committee in due course.

- 7.4 Number of Members required to call a special meeting of Council: The Shadow Council's existing rules (Rule 1.3, pg 81) require a request from at least 8 Members before a special meeting of Council can be called. This supplements a provision which allows a special meeting to be called by resolution of the Council or by the Chairman. The figure of 8 Members was thought, by the Joint Committee's sub-group of Members to be a suitable number as it represents approximately 10% of the Council Membership.
The Committee is asked to consider whether this figure should be changed, or whether this should be reviewed in the light of experience as the business of the Shadow Council progresses.
- 7.5 Time limit on Members speaking at meetings: Whilst a protocol may be agreed in respect of speaking at Budget Council which would apply different time constraints, the general time limit on Member speeches during debate is 5 minutes (Appendix 3 to Council Procedure Rules, pg 107).
In deciding what time limit should apply to Members speaking at Shadow Council and Committee meetings, a balance needs to be struck between ensuring that Members have an adequate opportunity to express their views, and that the business of the decision-making body can be carried out expeditiously. It should also be borne in mind that the Chairman of the meeting has discretionary powers to allow a longer period of time for Members to speak if he/she chooses to do so.
The Committee is asked to consider whether a change should be made to the Shadow Council's Procedure Rules at this stage, or whether the time limit on Members speaking should be reviewed in the light of experience as the business of the Shadow Council progresses.
- 7.6 Council seating plan: One of the Governance and Constitution Committee's responsibilities is to approve the overall seating plan for Shadow Council meetings. Comment was made at the Joint Committee meeting that this, perhaps, was not something which should be agreed by a Committee of the Shadow Council.
However, it would seem to be beneficial to retain this responsibility to be retained by the Committee in case there is any need for a Member decision to be made on seating plan issues.
- 7.7 Confirmation of minutes etc at Council meetings: Council Procedure Rule 7, pg 82 of the Constitution deals with the way in which the Shadow Council meeting confirms the minutes of its last meeting. Only matters relating to the accuracy of the minutes may be raised by way of a motion.
Rule 8 deals with the record of decisions of the Cabinet and minutes of any other committees. Any question about accuracy must be considered and determined by the Cabinet or that committee at its next meeting.

An issue has arisen as to whether Members should be allowed to raised questions or make comments upon the record of decisions of the Cabinet or minutes of any other committees.

If the Committee considers that this should be allowed, a recommendation should be made to the Shadow Council to allow questions or comments upon the record of decisions of Cabinet and minutes of any other committees to be put to any Cabinet Member, Chairman or Vice Chairman of the Committee as appropriate. The following Constitutional provision could be recommended to the Shadow Council for adoption as part of Rule 8:

“A Member may ask a Cabinet Member or a Committee Chairman (or in his/her absence the Vice Chairman) a question, or comment on any Record of Decision or Minute. The Cabinet Member or the Chairman or in his/her absence the Vice Chairman will respond using their reasonable endeavours to provide a response which addresses the matters raised in reply to the question as put by the Member. The provisions in Procedure Rule 11.4 in relation to replies shall also apply here. There will be no debate on any question, comment or response under this procedure and no further motions can be moved.

“Where a Member wishes to ask a question or comment on any Part 2 matter before the Council, the question or comment must be given, in writing, to the Council’s Monitoring Officer at least one hour before the start of the Council meeting.

8.0 Conclusion

- 8.1 This report summarises those constitutional issues which have been informally raised in the period immediately before the Shadow Council's Constitution was adopted.
- 8.2 The report contains various recommendations which should be considered.
- 8.3 If the Committee agrees that changes should be made to the Shadow Council's Constitution, these will need to be recommended to the Full Shadow Council.

For further information:

*Officer: Brian Reed
Tel No: 01244 972205
Email: brian.reed@cheshire.gov.uk*

Background Documents: Nil

Documents are available for inspection at:

*Cheshire East Shadow Council Support Office
Congleton Borough Council
Westfields
Sandbach*