

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Decisions Taken in the Absence of a Portfolio Holder

1.0 Report Summary

1.1 This report addresses an issue concerning the need for executive decisions to be taken in the absence of the relevant Portfolio Holder.

2.0 Recommendation

2.1 That

(1) Council be recommended that the responsibilities for executive functions within the Constitution be amended to include the following provision:

“Any arrangements made by the Leader for the discharge of any functions by a Portfolio Holder will not prevent the Leader from exercising those functions.”

(2) the Committee consider the further options set out in paragraph 10.4 of this report and decide whether to make any recommendations to Cabinet.

3.0 Reasons for Recommendations

3.1 To enable decisions to be taken in a timely way and avoid undue delays.

4.0 Wards Affected

4.1 N/A

5.0 Local Ward Members

5.1 N/A

6.0 Policy Implications (including carbon reduction and health)

6.1 None

7.0 Financial Implications (authorised by Director of Finance and Business Services)

7.1 None

8.0 Legal Implications (authorised by Borough Solicitor)

8.1 Any changes to the arrangements for Portfolio Holder decision-making would require an amendment to the Constitution.

9.0 Risk Management

9.1 There are no risks identified with this matter.

10.0 Background and Options

10.1 Occasionally, a Portfolio Holder is not available when a decision is required and the decision has to await his or her return. This can also delay officer delegated decisions where Portfolio Holder consultation is required. It is therefore necessary to consider arrangements for taking Portfolio Holder decisions when the relevant Portfolio Holder is not available.

10.2 Under the Local Government Act 2000, the Leader, as the source of all executive authority, may exercise a function which he has delegated to a Portfolio Holder if the Portfolio Holder is not able to exercise the function. However, there is no express provision of this kind within the Council's Constitution. It is therefore proposed that the responsibilities for executive functions within the Constitution be amended to include the following provision:

“Any arrangements made by the Leader for the discharge of any functions by a Portfolio Holder will not prevent the Leader from exercising those functions.”

10.3 This will make clear what is the current position and will enable the Leader to take an executive decision if necessary in the absence of a Portfolio Holder. In accordance with the existing arrangements, any such decision would be taken at a formal public meeting.

10.4 Even with these arrangements in place, there could be occasions when both the Portfolio Holder and the Leader are not available. The Committee may therefore wish to consider further options such as:

1. the Deputy Leader being designated to take the decisions of other Portfolio Holders in the absence of the Leader;
2. the Leader authorising a particular Portfolio Holder to take a particular decision in the absence of another Portfolio Holder.

10.5 It should be recognised, however, that whilst such arrangements would lead to greater flexibility in executive decision-making, they could also cause confusion among other members and the public if the responsibility for a decision is unclear. The Committee may take the view, therefore, that such arrangements should be used sparingly and not routinely.

10.6 Any changes to the executive decision-making arrangements are a matter for the Leader and Cabinet and therefore if the Committee felt there was merit in pursuing the options in 10.4, it would need to make an appropriate recommendation to the Cabinet. It would then be for Council to approve any necessary amendments to the Constitution.

11.0 Access to Information

Local Government Act 2000 (published document)

The background papers relating to this report can be inspected by contacting the report writer:

Name: Paul Mountford
Designation: Democratic Services Officer
Tel No: 01270 696472
Email: paul.mountford@cheshireeast.gov.uk