

CHESHIRE EAST

CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Delegation of Executive Functions

1.0 Purpose of Report

- 1.1 To consider options for delegating and recording the delegation of executive functions from 1 April 2009.

2.0 Decision Required

- 2.1 That the Governance and Constitution Committee recommend to Council:

2.1.1 that the approach set out in the Appendix to this report be adopted as part of Cheshire East's Executive Arrangements and be reflected in the Council's Constitution to take effect from 1st April 2009;

2.1.2 that the Monitoring Officer be authorised to determine the remaining detail of the Appendix in consultation with the Leader and appropriate Cabinet Members and to make such amendments to the Council's emerging Constitution as he considers are necessary to give effect to the decision of Council.

3.0 Financial Implications for Transition Costs

- 3.1 None.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The discharge of functions by officers can be more cost effective than discharge by committees with the associated publicity and servicing requirements cost centres.

5.0 Legal Implications

- 5.1 In order to reduce the scope for challenging decisions taken by the authority it is vital to ensure that the constitution clearly sets out how executive functions are to be delegated.

6.0 Risk Assessment

- 6.1 In addition to the legal implications set out above, the Cabinet must strike an effective balance in functions that it retains for itself and those that it chooses to

delegate in order to ensure the effective and efficient day to day operation of the business of the authority.

7.0 Background – Local Authority Constitutions

- 7.1 English local authority constitutions are based on the Modular Constitution¹ promulgated by the then DETR upon the introduction of executive arrangements pursuant to the Local Government Act 2000. Part 3 of the constitution sets out which organs of the Authority are responsible for exercising its various powers and functions.
- 7.2 A definition of what constitutes executive functions is set out in section 3 of the attached draft Part 3. With some provisos which are detailed in that section, executive functions include:-
- “... those local choice functions identified in Section 1 as the responsibility of the Executive and all other functions of the Authority not specified in Section 2.”*
- 7.3 Executive functions are framed in this manner by regulations made under the 2000 Act². In brief, the regulations provide that determination of the local authority's policy of framework and budget and other constitutional and quasi-legislative functions, in addition to functions which involve determining applications for a licence, approval, consent, permission or registration or direct regulation of a person together with any related enforcement actions are not to be the responsibility of the executive (so rest with the Council). All other functions are to be the responsibility of the executive.
- 7.4 In terms of delegation to officers this effectively represents the powers required to ensure the day to day operation of the Council. Accordingly, a considerable range and degree of powers is required to be delegated and primarily two different approaches emerge from an examination of English local authority constitutions.
- 7.5 The first is an exhaustive approach to listing functions which officers have the delegated authority to carry out. Whilst there is merit in this approach in terms of precision and producing a comprehensive reference tool for decision makers, this approach can result in a document that lacks clarity and accessibility and in following a prescriptive approach care needs to be taken to ensure that no functions are missed.
- 7.6 The second approach is to affect a wide ranging general delegation of power subject to limitations in the terms of the delegation based on the nature of the decision and/or constrained by the application of a suite of council policies, procedures and codes of practice in different subject areas. This approach can lead to greater clarity for those consulting the constitution to get an understanding of how the local authority operates as well as providing officers

¹ DETR New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities.

² The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

with the flexibility and authority required to transact the business of the authority. There is less scope for required delegations to be overlooked in this approach whilst appropriate checks and balances are built into the system by way of the limitations on the exercise of delegated powers discussed above.

8.0 Proposals

- 8.1 The second approach is suggested for Cheshire East Council. In the attached working draft, parameters for officer decision making of general application are set out and then wide provision is made to accommodate the requirements of day to day business. Next, more bespoke, where required, provision is made for Service specific business needs which will be fleshed out as the initial attached draft is progressed.
- 8.2 The approach taken in terms of drafting style is intended to provide the reader with clarity and accessibility in terms of ascertaining responsibility for functions based on service areas rather than the type of function in question. As a result the full range of functions is covered in each service area. Those functions which are local choice/full council functions, which are the subject of separate reports, are clearly identified with provisions as to their delegation in the other sections of Part 3 of the constitution.
- 8.3 Members are reminded that the attached draft Part 3 is in an early form and will be refined, expanded and restructured as necessary once supporting policies are developed and approved and once second and third tier management posts, post holders and their responsibilities crystallise. Work continues to populate the remaining headings in the attachment.

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Background Documents:

DETR New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities (24 January 2000). <http://www.communities.gov.uk/publications/localgovernment/modularconstitutions>

SECTION 3{ X }: POWERS OF OFFICERS

1 GENERAL ROLES AND RESPONSIBILITIES OF OFFICERS AND MEMBERS

- 1.1** Members set policy priorities and strategies to reflect local interests and needs and are also responsible for allocating funding between individual priority areas. The Chief Executive, Strategic Directors, Heads of Service and their staff implement these strategies and policies by delivering services and major initiatives. It is officers therefore, who have responsibility for managing the Council's day to day operations, within a policy and budgetary framework laid down by Members.
- 1.2** Under the executive arrangements, both full Council and the Cabinet have specific functions and these can be delegated to committees or officers. Where Council or the Cabinet have established a committee to discharge their respective functions then subject to any limitations imposed by the Council/Cabinet respectively, that committee can also delegate its functions to officers.
- 1.3** The following scheme of delegation captures a full range of executive and full council functions by Service area. A definition of what constitutes an executive function is set out below. The majority of the functions set out in this section are executive functions delegated to officers by the Cabinet. Details of the functions that are delegated to officers by full Council and its committees can be found in Sections 1 and 2 of Part 3 of the Constitution.

2.0 EXECUTIVE FUNCTIONS

- 2.1** Executive functions include those local choice functions identified in Section 1 as the responsibility of the Executive, and all other functions of the Authority not specified in Section 2.

However, in accordance with the functions Regulations³, the following are NOT functions of the Executive:

- 2.1.1** imposing conditions, limitations or restrictions on approvals, licences, permissions or registrations on a non-executive function;
- 2.1.2** determining any terms that any such approval etc. is subject to⁴;
- 2.1.3** determining whether and how to enforce any failure to comply with such approvals or any of the attached conditions etc.⁵;
- 2.1.4** amending, modifying, varying or revoking any such approval⁶;
- 2.1.5** determining whether a charge should be made for such approvals or the amount of such charge⁷;
- 2.1.6** making, amending, revoking or replacing the Members Allowance Scheme or determining any amounts or rates in the scheme⁸;
- 2.1.7** electoral arrangements⁹;
- 2.1.8** governance arrangements¹⁰;
- 2.1.9** community governance reviews¹¹;
- 2.1.10** subject to any Regulations under S20 of the Local Government Act 2000, making arrangements for the joint exercise of functions under S101(5) of the Local Government Act 1972 and making appointments to committees/joint committees under S.102 of the 1972 Act¹²;
- 2.1.11** any functions reserved to full Council under legislation which pre-dates the Regulations¹³;
- 2.1.12** amending, modifying, varying or revoking any plan or strategy unless it is required to give effect to the requirements of the

³ The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

⁴ Reg. 2(2)

⁵ Reg. 2(3)

⁶ Reg. 2(4)

⁷ Reg. 2(6)

⁸ Reg. 2(5) and 2 (6)

⁹ Reg 2(6A and B)

¹⁰ Reg2(6Ca) -c),Da) and b), and F)

¹¹ Reg2(6E)

¹² Reg. 2(8)

¹³ Reg. 2(11)

Secretary of State or Minister submitted for approval or where full Council when approving the plan/strategy authorised the Executive to do so¹⁴;

- 2.1.13** the adoption/approval of a plan/strategy which is not in the policy framework, if full Council has determined that full Council should take the decision¹⁵; and where the decision is contrary to or not wholly in accordance with the Budget and Policy Framework¹⁶;

3.0 POWERS OF OFFICERS

- 3.1** The Chief Executive, Strategic Directors, Heads of Service, Chief Finance Officer, Borough Solicitor/Monitoring Officer and Borough Secretary or their nominated representatives are entitled to be notified and represented at all meetings of the Council, the Cabinet collectively or individually (including any Committees or Sub-Committees of the Executive), Committees, Sub-Committees, Special Committees, Panels, Boards or other similarly constituted bodies including briefing meetings and to be consulted in advance on all reports and items of business being submitted to Members.
- 3.2** The fact that an executive function is delegated to an officer under these arrangements does not preclude the Cabinet from exercising the function directly. The Cabinet may determine to reserve decisions about particular matters to itself. In addition, the relevant Cabinet portfolio holder or Leader of the Cabinet may request that an officer refrains from exercising a delegated authority in respect of a particular matter with the effect that the matter is taken back to the Cabinet for a decision instead.
- 3.3** In addition to the delegations set out in this scheme, the Cabinet can arrange for bespoke delegations on specific matters.
- 3.4** In some circumstances an officer may consider a matter to be of such importance that their delegated authority should not be exercised. In these circumstances the officer may refer the matter back to the Cabinet for determination.
- 3.5** Each officer has power to act under this section in relation to the budgets, resources and policies which are within their areas of responsibility.

¹⁴ Reg. 4

¹⁵ Reg. 5(1)

¹⁶ Reg. 5(1)

- 3.6** Officers with delegated powers under this scheme may, subject to any limitations imposed in the terms of the delegation to them, delegate further to other officers. Every such sub-delegation shall be recorded in writing within internal Service schemes of delegations. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- 3.7** The provisions of paragraphs 3.2 and 3.4 above apply to sub-delegations between officers as they do to delegations from Cabinet to Officers.
- 3.8** Officers shall devolve responsibility for service delivery and management to the nearest practicable point to the service user.
- 3.9** Before taking decisions, Officers are under a duty to satisfy themselves that they have the duly delegated power to do so and that they have undertaken any appropriate consultation with Chief Officers¹⁷ where the matter in question involves professional or technical considerations that are not within the officer's sphere of competence. Officers are under a duty to ensure that they take decisions in accordance with:-
- 3.9.1** professional standards
 - 3.9.2** statutory powers, guidance and Codes of Practice
 - 3.9.3** this Constitution
 - 3.9.4** the approved budget and policy framework including contract and financial procedure rules
 - 3.9.5** any other approved policies, procedures and practices.
- 3.10** This section does not delegate to officers:-
- 3.10.1** any other approved policies, procedures and practices
 - 3.10.2** any matter reserved by law or by this Constitution to the Council or to any committee or sub-committee of the Council
 - 3.10.3** any matter in respect of which specific provision is made elsewhere in this constitution
 - 3.10.4** any matter which in law may not be delegated to an officer

¹⁷ A definitions section to be inserted:- includes Head of Paid Service, Solicitor/monitoring officer, S151 Officer etc....

3.10.5 any Key Decision other than those in respect of which the Cabinet has made specific provision for delegation to officers

3.11 Any executive decision made under this scheme of delegation may be called-in in accordance with the provisions of paragraph {X} of the {Executive/Scrutiny} Procedure Rules

4 DELEGATIONS TO OFFICERS – GENERAL

4.1 The Chief Executive, Strategic Directors, Heads of Service and other named officers¹⁸ (or officers duly authorised by them to act on their behalf) have the power to take all actions necessary to carry into effect without reference to the Cabinet or to any of its committees, matters of day to day management and administration of the Council's affairs. In particular, and without prejudice to the generality of this clause, this power includes the following functions:-

4.2 FINANCIAL

Generally

4.2.1 Directors are responsible for financial management within their departments. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council.

4.2.2 Directors shall establish, operate and keep under review schemes of internal delegation in consultation with the [CFO?] to ensure that:-

4.2.2.1 day to day financial management within their services is carried out in a secure, efficient and effective manner and in accordance with Financial Procedure Rules and Codes of Practice on Financial Management.

4.2.2.2 budgetary problems are contained wherever possible within the Department and if necessary seek specific in year approval for the transfer of resources between budgets.

4.2.2.3 Reports are made to the appropriate bodies on the management of resources and performance against targets set out in the service business plan

¹⁸ This provision enables particular Heads of Service or other officers to be identified as benefiting from these general delegations concurrent with Directors etc and such officers/posts need to be listed elsewhere in the constitution and referred to in this footnote.

- 4.2.2.4** risks are appropriately assessed, reviewed and managed
- 4.2.2.5** to ensure all members of staff are fully trained, aware and comply with the requirements of the Financial Procedure Rules, the Code of Practice on Financial Management and the Contract Procedure Rules.
- 4.2.2.6** to ensure that all allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Chief Finance Officer and that any local investigations are undertaken thoroughly, consistently and impartially.
- 4.2.2.7** Following approval of departmental, scheme or project specific budgets, to incur revenue and capital expenditure within those budgets and in accordance with the Financial Procedure Rules, Contract Procedure Rules, Codes of Practice and internal service schemes of delegation.

Bad Debts

- 4.2.3** To write off debts (other than local taxation) in accordance with the procedures and maximum values set out in Financial Procedure Rules.

Payments in Advance

- 4.2.4** To approve payments to suppliers prior to the receipt of goods¹⁹ in accordance with the limits set out in Financial Procedure Rules.

Cash Imprests Accounts

- 4.2.5** To authorise the establishment of individual cash imprests accounts in accordance with the limits set out in Financial Procedure Rules.
- 4.2.6** To approve individual payments from cash imprests accounts in excess of the limit set out in Financial Procedure Rules.

4.3 PERSONNEL

General

- 4.3.1** To deal with the full range of employment and staff management issues (particularly in relation to appointments, discipline,

¹⁹ In exceptional circumstances – Financial Procedure Rule [?]

performance, grievance, grading, sick pay, leave, equal opportunities and health and safety) in accordance with the Authority's policies and procedures {list or refer to list of internal/external policies/procedures?}).

Changes to Staffing Structures

4.3.2 To agree changes to staffing structures except where the restructure:

4.3.2.1 involves the loss of one or more posts not currently vacant

4.3.2.2 involves the regrading of posts or the grading of new posts

4.3.2.3 involves changes to existing National or Local Agreements and policies

4.3.2.4 cannot be achieved within delegated powers in respect of budgets

4.3.3 Decisions are subject to the prior notification of the Head of Human Resources and Organisational Development and prior consultation with all appropriate parties affected by the decision, notably the Trade Unions.

4.3.4 Decisions in respect of restructures which do not fall within 4.3.2 above are delegated to the Head of Human Resources and Organisational Development subject to consultation with the relevant Strategic Director, Head of Service and other appropriate parties.

4.3.5 Proposals which involve additional Council expenditure outside officer delegations or which involve issues outside existing Council policy will be referred to the Council or appropriate committee.

4.4 LAND AND BUILDINGS

4.4.1 In the following cases, acquiring of interests in and rights over land or premises on terms negotiated and recommended by the { } Officer, subject to there being sufficient budgetary provision and in accordance with the Finance and Contract Procedure Rules:-

4.4.1.1 for freehold acquisitions or single payment in return for the grant of an easement or other rights in or over land

and premises, the consideration being not more than £{ }, or

4.4.1.2 leases, licences, tenancies and other arrangements of a periodic nature, the annual payment being not more than £{X} and the term not being longer than { } years;

4.4.1.3 easements, the annual payment being not more than £{X}, or the total consideration being not more than £{X} where the grant is in consideration of a single payment.

4.4.2 Approving the occasional use of land and premises, by outside bodies and third parties and the charges to be made.

4.4.3 Granting of wayleaves, easements and licences on terms recommended by the {X}.

4.5 OFFICER AUTHORISATION AND COMPLAINT MATTERS

Notices, Requisitions for Information, and Legal Proceedings

4.5.1 With the approval of the Borough Solicitor:-

4.5.1.1 to serve or authorise the service of requisitions for information²⁰, any notice, order, or direction

4.5.1.2 to approve or issue any licence or regulations which may be required or authorised by or under any legislation or byelaws.

4.5.1.3 Subject to the approval of the Borough Solicitor to authorise legal proceedings

Certification of Contracts - Local Government (Contracts) Act 1997

4.5.2 Subject to the approval of the Borough Solicitor, to sign certificates for contracts which relate functions in their area of responsibility.

Authorising Officers

4.5.3 To authorise officers possessing such qualifications as may be required by law or in accordance with the Council's policy, to take samples, carry out inspections or surveys, enter land and

²⁰ in respect of particulars of persons with an interest in land or premises – insert statutory references

premises and generally perform the functions of a duly authorised officer of the Council (however described) and to issue any necessary certificates of authority.

Data Protection, Human Rights, Surveillance Activities, Freedom Of Information

4.5.4 To implement and ensure compliance with:

4.5.4.1 the rules on data protection, human rights, surveillance activities, and freedom of information²¹;

4.5.4.2 the Council's policies on these matters; and

4.5.4.3 guidance and advice from the Borough Solicitor.

4.5.5 To designate officers with specific responsibilities for these matters.

4.5.6 To advise the {Information Controller} of any new types of data processed, of new ways of processing personal data and of any new persons or organisations to whom data is given.

4.6 GENERAL

Disposal of Property

4.6.1 Authorising the write-off, loss or the disposal of obsolete or surplus vehicles, plant, equipment, machinery, stores and materials in accordance with Financial Procedure Rules.

Stores Deficiencies and Surpluses

4.6.2 To authorise the making good or otherwise of stores deficiencies up to the limit specified in Financial Procedure Rules.

Lost Property

4.6.3 To take responsibility, as identified in the Financial Procedure Rules for lost property found on Council premises, including the registration of found items and the designation of a responsible officer to follow the found property procedures.

Management of Land, Premises, Vehicles and Equipment

²¹ Contained within the following: Data Protection Act 1998, Human Rights Act 1998, Freedom of Information Act 2000 and the Regulation of Investigatory Powers Act 2000 and subsidiary legislation

4.6.4 Subject to corporate or centralised arrangements, to manage all land, premises, vehicles, plant, equipment, machinery, stock, supplies, materials, furniture, appliances, and uniforms necessary for the provision of the services for which they are responsible including arrangements for cleaning, maintenance, hire and letting.

Local Choice Functions

4.6.5 To undertake the Local Choice Functions²² duly delegated to them and within their area of responsibility.

Safeguarding Children

4.6.6 To ensure that arrangements are in place to discharge the responsibilities of the Department in respect of the need to safeguard and promote the welfare of children as required under Section 11 of the Children Act 2004.

Etc...

5 POWERS OF SPECIFIC OFFICERS

5.1 Chief Executive

5.2 Strategic Director Places

5.3 Strategic Director People

5.4 Borough Treasurer and Head of Assets

5.5 Borough Solicitor and Monitoring Officer

5.6 Head of Human Resources and Organisational Development

5.7 Head of Policy and Performance

5.8 Head or Service for Children and Families

5.9 Head of Service for Adults

5.10 Head of Health and Wellbeing Services

5.11 Head of Transformation

5.12 Head of Environmental Services

5.13 Head of Safer and Stronger Communities

²² See Section 1, Part 3 of the Constitution

5.14 Head of Planning and Policy

5.15 Head of Regeneration