

CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Cabinet Procedure Rules

Purpose of Report

- 1.1 For Cabinet to make recommendations to the Governance and Constitution Committee upon the Cabinet Procedure Rules which will apply with effect from 1st April 2009.

2.0 Decision Required

- 2.1 That, having considered the issues raised in this report, the Governance and Constitution Committee be asked to recommend to Council that the Cabinet Procedure Rules appended to this report should be adopted and should take effect on 1st April 2009.
- 2.2 That Cabinet's recommendations should include its views upon the issues highlighted in Appendix A.

3.0 Financial Implications for Transition Costs

- 3.1 There are no 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 The legal implications are taken into account in the body of this report.

6.0 Risk Assessment

- 6.1 As the recommended model of Procedure Rules largely follows the Modular Constitution format prepared by the Government Department, taking on board tried and tested provisions of Rules in use across Cheshire, no identifiable risks arise.

7.0 Background

- 7.1 The Council has adopted a Constitution, including Procedure Rules, which govern the way in which its Council meetings, Committees, Sub-Committees and Cabinet operate during the Shadow Council period.
- 7.2 These are currently in use and, with the exception of a small number of changes which have been considered by Members, have served the Council well.
- 7.3 Whilst the existing Constitution has been in operation since the Shadow Council came into being, this was prepared to serve the needs of the limited functions for which it was responsible. However, the Council will need to adopt a Constitution which will take effect on 1st April 2009 and which will serve the purposes of a unitary local authority.
- 7.4 The adoption of a new Constitution is therefore an opportunity for Members to consider whether the current Cabinet Procedure Rules contain satisfactory provisions.
- 7.5 Attached to this report as Appendix B are the current Rules, containing minor amendments eg removal of references to "Shadow Council" and "Interim Monitoring Officer".
- 7.6 Appendix A is a schedule of key issues identified by officers by way of a reminder of key provisions of the Rules.

8.0 Conclusions and Recommendation

- 8.1 Cabinet is asked to give consideration to the issues raised in the schedule at Appendix A and to provide direction upon the provisions which should be included in the Rules which will form part of the Constitution from 1st April 2009.

For further information:

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Background Documents:

- ***Cheshire East Shadow Council Constitution***
- ***Government Department Modular Constitution***
- Cheshire local authorities' constitutions

Appendix A

Page/ref	Issue	Comment
Pg 5 / R1	Strong Leader/Council Leader model of Executive Arrangements	The Council must decide whether to adopt a “Strong Leader” or “Council-led” model of Executive Arrangements. The Strong Leader model empowers the Leader to appoint Cabinet members, determine their responsibilities and decision-making powers. The Leader is appointed by Council. Under the Council-led model, Council appoints all Cabinet Members and determine their decision-making powers. The drafting of Rule 1 contains optional provisions.
Pg 6 / R2.3	Task/advisory groups	The Cabinet may appoint such Groups, whose membership may be from within the Council, or drawn from outside of the Council
Pg 7 / R4	Cabinet meetings	If individual Cabinet Members are empowered to make decisions, it must be decide whether they will do so in public meetings, subject to the statutory requirement that all Key Decisions must be made in public.
Pg 7 / R5	Quorum	The current 50% of Cabinet Membership is required for meetings to be quorate. The minimum is 25%.
Pg 7 / R7	Member speaking at Cabinet meetings	Apart from Chairmen and Spokespersons of scrutiny committees (who may attend Cabinet meetings, and speak on any agenda item) any Member of the Council may, with the agreement of the Leader, attend and speak.
Pg 8 / R8.9	Cabinet agenda items	Any Member of the Council may make a request to the Leader that an item be included on the agenda of a meeting
Pg 9 / R 8.13	Public speaking at Cabinet meetings	10 minutes are allowed for members of the public to speak on

		<p>matters of Council business. 5 minutes are allowed for each member of the public.</p> <p>Consideration should be given to whether a member of the public wishing to speak should be required to give a period of notice, to identify the subject of the question and the area within which he/she resides or carries on business.</p>
Pg 10 / R 14	Urgency powers	The Chief Executive may make urgent executive decisions in consultation with the Leader

Appendix B

CABINET PROCEDURE RULES

1 Composition of the Cabinet

- 1.1 As provided by Section 11(3) and (8) of the Local Government Act 2000, the Council's Cabinet shall consist of the Leader of the Council and two or more Members of the Council. The number of Members appointed to the Cabinet including the Leader shall not exceed ten.
- 1.2 **[Council-led model]** The Council has decided that its Cabinet shall consist of ten Members, including a Leader and Deputy Leader. Portfolios of responsibility may be allocated by the Council to Cabinet members from time to time.
- 1.3 **[Council-led model]** The Leader and other Members of the Cabinet will be appointed by the Council at its first meeting. The Council may change the size and composition of the membership of the Cabinet at any time.
- 1.2 **[Strong Leader model]** The Council operates a model of Executive Arrangements which empowers the Leader to decide the Membership of the Cabinet and the responsibilities, and decision-making powers, of each Cabinet Member. Part 3 of this Constitution contains details of the delegations made by the Leader to each Cabinet Member.
- 1.3 **[Strong Leader model]** At the Annual Meeting of Council, the Leader will present to the Council a written record of delegations made by him for inclusion in the Council's scheme of delegation at Part 3 of this Constitution. The document presented by the Leader will contain the following information about executive functions in relation to the coming year:
 - 1.3.1 the names, addresses and electoral divisions of the people appointed to the Cabinet by the Leader;
 - 1.3.2 the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
 - 1.3.3 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them;
 - 1.3.4 The nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements, and the names of those Cabinet Members appointed to any joint committee for the coming year; and

- 1.3.5 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.
- 1.4 **[Strong Leader model]** Where the Cabinet, a committee of the Cabinet, or an individual Member of the Cabinet is responsible for an executive function, they may delegate further to a committee of the Cabinet, an area committee, joint arrangements, or an officer.
- 1.5 **[Strong Leader model]** Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated them.

2 The law and executive functions

- 2.1 Those responsible for discharging executive functions will ensure that they are acting within the law and this Constitution.
- 2.2 The functions in question are set out in Part 3 of this Constitution. This also sets out the body or individual responsible for taking decisions in respect of executive functions.
- 2.3 The Cabinet may appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Council.

3 Conflicts of Interest

- 3.1 Where the Leader or any Cabinet Member has a conflict of interest, he will follow the requirements of the Council's Code of Conduct for Members.
- 3.2 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Standards Committee for a dispensation from the provisions of the Code.
- 3.3 If the discharge of an executive function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest then action set out in 3.2 shall be considered.

4 Meetings of the Cabinet

- 4.1 The Cabinet will meet as indicated in the Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he sees fit. Locations of meetings will be published in the calendar of meetings.
- 4.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.
- 4.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside.
- 4.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.
- 4.5 Attendance by other Members of the Council or the public shall be in accordance with the Access to Information Procedure Rules, by invitation, or as set out in paragraphs 7.1 to 7.2 below.

5 Quorum at Cabinet Meetings

- 5.1 The quorum at a meeting of the full Cabinet, or a Committee or Sub-Committee established by the Cabinet, shall be 50% of its membership.

6 Taking of Decisions by the Cabinet

- 6.1 Decisions by the Cabinet, a committee of the Cabinet, or a sub committee of the Cabinet, will be taken in accordance with the Council's Access to Information Procedure Rules.

7 Members attending and speaking at Cabinet Meetings

- 7.1 The Chairman and Spokespersons of the Council's Scrutiny Committees shall be entitled to attend any formal public meeting of the Cabinet and to speak to any matter on the agenda for that meeting.
- 7.2 Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.

8 Business at Cabinet Meetings

- 8.1 The business to be transacted at meetings of the Cabinet will be set out in an Agenda for the meeting in question, subject to any requirements or exemptions under the Access to Information Procedure Rules.

- 8.2 The Agenda may be supported by additional papers prepared by the Officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information.
- 8.3 The Cabinet is obliged to consider matters referred to it by a Scrutiny Committee, or by the Full Council for consideration under the Scrutiny Rules.
- 8.4 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 8.5 The **[insert title of officer responsible for Democratic Services]** or his/her nominated Officer shall be responsible for preparing and distributing the Agenda for Cabinet meetings, attending meetings for the purpose of advising the Cabinet on matters within his/her area of responsibility and recording decisions as required under this Constitution.
- 8.6 In taking decisions, the decision-maker must satisfy itself that it has before it adequate and appropriate advice from its service, legal and financial advisers who shall be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires or probity then advice must be obtained from the Monitoring Officer and the Chief Finance Officer.
- 8.7 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 8.8 The **[insert title of officer responsible for Democratic Services]** will ensure that any matters referred to the Cabinet by the Council or the Council's Scrutiny committee are placed on the Agenda for the next appropriate meeting of the Cabinet.
- 8.9 Any Member of the Council may request the Leader to place an item on the Agenda of a meeting of the Cabinet. The Leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.
- 8.10 The Head of the Paid Service, the Monitoring Officer and/or the Chief Finance Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 8.11 Except where it is urgent, business cannot be conducted at formal meetings of the Cabinet unless it is included in the Agenda for the meeting. Where there urgent business must be dealt with, the requirements of the Access to Information Procedure Rules must be complied with.

- 8.12 The Cabinet will report to the Council, as required under the Access to Information Procedure Rules, on any matter which is classified as a key decision and which is dealt with under special urgency procedures.
- 8.13 Questions can be submitted by members of the public at meetings of the Cabinet in accordance with Council Procedure Rule No.35 and Appendix 7 of the Council Procedure Rules.

9 Voting at Cabinet Meetings

- 9.1 Voting at Cabinet meetings will be by a show of hands and any Member may require, immediately after the vote is taken, that the Minutes of the meeting record how he/she voted or abstained. Where there are equal votes cast, the Leader or in his/her absence, the person presiding will have a second and casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by secret ballot conducted in accordance with Council Procedure Rules.

10 Cabinet Committees/Sub-Committees

- 10.1 The Cabinet may appoint such Committees or Sub-Committees as it considers necessary and appropriate to assist in the discharge of its functions. In making such appointments, the Cabinet must specify the name of the Committee/Sub-Committee, its membership (including its Chairman and, if appropriate, Vice-Chairman) and the terms of reference of the body.

11 Motion Under Standing Order 12

- 11.1 As prescribed in Rule 43.10 of Part C of the Council Procedure Rules, a mover of a motion under Standing Order 12 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers.

12 Resolving Disputes

- 12.1.1 In the case of any dispute during the proceedings of the Cabinet the relevant parts of this Constitution will apply and, after considering the application of the relevant provisions, the person presiding at the meeting will rule on the issue in question and his/her ruling will be final.

13 Reserves/substitute members

- 13.1 There shall be no reserve or substitute members of the Cabinet.

14 Approval of Urgent Business

Where any matter is urgent and cannot await the next meeting, the Chief Executive may take the necessary action, provided that she has first consulted the Leader (or Deputy Leader if he/she is not available). Appendix 4 of the Council Procedure Rules apply.