

REPORT TITLE: CHANGES TO THE CONSTITUTION

25 SEPTEMBER 2019

REPORT OF THE MONITORING OFFICER

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WARD(S): ALL

PURPOSE

The Council adopted the updated Constitution at an Extraordinary Council meeting on 19 March 2019 (Report CL144 refers) that became effective from the Annual Meeting on 15 May 2019. Further changes were agreed at Council on 26 June 2019 to allow for public speaking as part of the democratic process at Full Council and a number of other minor amendments (Report CL145 refers).

The new administration would like to introduce Cabinet Member Decision Days, whereby delegated decisions to be made by Cabinet would be made in public with the opportunity for public comment. The Council's constitution is required to be amended to enable this new process and Appendix A to the report sets out the proposed changes for Member agreement.

RECOMMENDATIONS:

1. That to facilitate the introduction of Cabinet Member Decisions Days, Council agree to the changes to the Constitution, as set out at Appendix A to the report.

1. SUPPORTING INFORMATION:

- 1.1 At the first meeting of the new Cabinet on 16 May 2019, the Leader announced the new Administration's intention to introduce Decision Days, where Cabinet Members take decisions delegated to them in public, with an opportunity for public and non-executive Member contributions.
- 1.2 This requires amendments to various sections of the Constitution, as set out in Appendix A to the report.

2. Cabinet Member Decision Days

3. General

- 3.1 Decision Days will be scheduled on a monthly basis, usually on the first Monday morning of the month (but having regard to the aim to meet mid-way between scheduled Cabinet meetings). The purpose of holding Decision Days is to improve transparency of decision-making when delegated powers are exercised. For the avoidance of all doubt, Decision Days do not constitute any committee, sub-committee or forum.
- 3.2 The dates of proposed Decisions Days will be published in advance on the Council's Committee webpages.
- 3.3 With the agreement of the Leader, scheduled Decision Days can be cancelled if there is a lack of appropriate business. In addition, ad hoc Decision Days may be arranged to deal with urgent matters, if required.
- 3.4 Decision days will be held in public, except where dealing with confidential or exempt matters.

4. Publicity

- 4.1 The agenda for the decision day and the accompanying report(s) will be published five working days in advance to give both Members and the public opportunity to consider the contents prior to the decision being made.
- 4.2 The agenda and any accompanying report(s) will be published on the Council's Committee webpages.
- 4.3 Where Cabinet Members are taking key decisions (as defined in the Council's Constitution Article 13), these will be included in the Forward Plan which is required to be published at least 28 days prior to the decision being made. In addition, wherever possible, the Forward Plan will be used to give advance notice of all Cabinet Member decisions to be taken in the relevant period, whether classed as key decisions or not.

5. Speaking at Decision Days

- 5.1 Members of the public and visiting councillors can speak at decision days on a specific item due for decision. Contributions are not permitted on general

matters relating to Cabinet or Cabinet Members (this is, however, permissible at Cabinet meetings).

- 5.2 Both members of the public and visiting councillors will be required to register three working days in advance if they wish to speak at the Decision Day (NB Working days excludes weekends and public holidays).
- 5.3 Members of the public will each be limited a maximum of three minutes, subject to an overall period of 15 minutes per Cabinet Member Decision Day.
- 5.4 Visiting Councillors will be limited to a maximum of five minutes.
- 5.5 Cabinet Member may advise how any contributions will be dealt with by noting, action or referral.
- 5.6 No public speaking will be permitted on the same or similar topic within a period of six months.

6. Decision Days – Order of Business

- 6.1 Each decision day could include decisions by any of the Cabinet Members, depending on required business.
- 6.2 Agendas will be ordered and prepared to group individual Cabinet Members decisions together. As speakers will not be required to register to address a decision day until after the agenda is published, it will not be possible to give exact timings for individual decisions.
- 6.3 In addition to a Democratic Services Officer, the Officer(s) relevant to the proposed decision will attend the decision day to provide any further information or advice required prior to the decision being made.
- 6.4 At the conclusion of each item, the Cabinet Member will confirm the decision that he or she is taking.

7. Action following the Decision Day

- 7.1 No minutes will be produced of the decision day but a record of the decision will be published within five working days of the decision being made and all Members will be advised via email. With the exception of exempt decisions, decisions will be published on the Council's website.
- 7.2 Where a Cabinet Member is taking a key decision (as defined in the Council's Constitution Article 13), the decision will be subject to a five day call-in period before it can be implemented.
- 7.3 The decision record will include a record of the decision made (including date); record of reasons; details of any alternative options considered and rejected in making the decision; and a record of any conflict of interest (and if so, and relevant, any dispensation granted).

8. OTHER OPTIONS CONSIDERED AND REJECTED

- 8.1 Not making any changes to the Constitution. This option was rejected as the amends are to give effect to changes requested by the new Administration in addition to enhancing the efficient and effective running of the Council.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CL144 – Constitution Review – 19 March 2019

CL145 – Changes to the Constitution – 26 June 2019

Other Background Documents:-

None

APPENDICES:

Appendix A – Decision Days - Changes proposed to Constitution

APPENDIX A – CHANGES REQUIRED TO ENABLE DECISION DAYS

Part 3.2 - The Cabinet and its Committees (extract)

2.4 General Powers Granted to Cabinet Members

The following responsibilities have been delegated to each individual Cabinet Member to exercise within their portfolio and service area:

- a) To exercise the Executive powers and duties of the Council for strategic development, policy direction, partnership working, executive powers including key decisions, programme and performance management, in accordance with the Council's procedure rules for their portfolio areas.
- b) To be responsible for ensuring the successful delivery of business transformation in relation to their portfolio areas;
- c) To request the Scrutiny Committees review changes to policy and strategy within their areas of responsibility;
- d) To have oversight of budget planning and monitoring in their service area;
- e) To act as the Council's lead spokesperson on strategic bodies for their areas of responsibility.
- f) To determine priorities in conjunction with the relevant member of the Council's management team and other Cabinet Members (within the policy framework and budget);
- g) To make proposals for policy initiatives, within the policy framework and budget, and for the amendment of such framework subject to the agreement of the Cabinet and Council;
- h) To recommend to the Cabinet responses to reports from the Scrutiny and Audit and Governance Committees;
- i) To agree minor matters and non-material amendments to policy;
- j) To approve grant funding allocations to third parties within approved budgets to this purpose
- k) To approve all in-year changes to fees and charges
- l) The Cabinet Member for Built Environment and Wellbeing has delegated authority to approve all community safety partnership strategies under the Crime and Disorder Act or other related legislation.

Decisions delegated to Cabinet Members may be taken at Cabinet Member Decision Days, as set out in the Cabinet Procedure Rules (Part 4.2 of the Council's Constitution) and in accordance with the Access to Information Procedure Rules (Part 4.4 of the Council's Constitution).

Part 4.2 - Cabinet Procedure Rules (extract)

Executive Functions

The Cabinet is the Council's Executive body and is responsible for carrying out those functions which by law or under this constitution are designated as Executive functions.

The Leader decides how the Executive functions shall be discharged. This may be by:

- a) The Cabinet as a whole;
- b) A Committee of the Cabinet;
- c) An individual Member of the Cabinet
- d) **At a Cabinet Member Decision Day**
- e) An officer;
- f) An area Committee;
- g) Joint arrangements; or
- h) Another local authority.

Meetings of the Cabinet and its Committees **and Cabinet Member Decision Days**

Meetings of the Cabinet and its Committees **and Cabinet Member Decision Days** will be determined by the Leader in consultation with the Chief Executive. Executive decisions made by the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Procedure Rules set out in Part 4 of this Constitution. These rules also apply to executive decisions which have been delegated.

Cabinet Member Decision Days

Advance notice of Cabinet Member Decision Days will be published in accordance with all statutory requirements, namely five days in advance together with any accompanying reports thereby enabling opportunity for Members and the public to consider matters prior to the decision to be made. Decision Day agendas will be published on the Council's website

Cabinet Decision Days will be held in public, except where dealing with confidential or exempt matters.

Public speaking will be permitted at Cabinet Member Decision Days provided it relates to an item on the agenda for decision and at least three clear working days prior notice has been given. Contributions are not permitted on general matters relating to Cabinet or Cabinet Members (which is permissible only at Cabinet meetings). Members of the public will each be limited to a maximum of three minutes, subject to an individual maximum of fifteen minutes

Visiting Councillors will be allowed to speak at a Cabinet Member Decision Day, provided at least three clear working days prior notice has been given. Visiting Councillors will be given a maximum of five minutes, which includes their original question/comment and any additional supplemental points.

No public speaking will be permitted on the same or similar topic within a period of six months.

No discussion shall take place with the person(s) addressing the Cabinet Member Decision Day. The Cabinet Member may advise how, if at all, the public comments will be dealt with by noting, action or referral.

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Part 4.4 - Access to Information Procedure Rules

1. Scope

- 1.1 These Paragraphs apply to all meetings of the Council, Scrutiny Committees, regulatory Committees, joint Committees, Sub-Committees, panels and public meetings of the Cabinet (together called meetings). **Some aspects also apply to Cabinet Member Decision Days, as indicated.**

2. Additional rights to information

- 2.1 These paragraphs do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. Rights to attend meetings **and Cabinet Member Decision Days**

- 3.1 Members of the public may attend all meetings **and Decision Days** subject to the exceptions in these paragraphs **and any contrary provision in the Constitution.**
- 3.2 Any person is permitted to film or record any meeting of Council, a Committee, Sub-Committee or the Cabinet **or Cabinet Member Decision Day**, save where the public have been excluded for the consideration of exempt or confidential business. The paragraphs, as prescribed by legislation, will allow for the reporting of meetings via social media of any kind. The Council will provide reasonable facilities to facilitate reporting.
- 3.3 Any person exercising such rights must not disrupt the proceedings. Examples of what will be regarded as disruptive include, but are not limited to, moving outside the area designated for the public, making excessive noise, intrusive lighting/flash or asking a Member to repeat a statement. In addition, members of the public or the public gallery should not be filmed as this could infringe on an individual's right to privacy, if their prior permission had not been obtained. Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairperson and may be asked to leave the meeting.

4. Notices of meeting **and Cabinet Member Decision Day**

- 4.1 The Council will give at least five clear days' notice of any meeting **or Cabinet Member Decision Day**, except where an urgent meeting is convened by posting details of the meeting.

5. Access to agenda and reports before the meeting **and Cabinet Member Decision Day**

- 5.1 The Council will make copies of the agenda and reports open to the public available for inspection on the Council's website and at the designated office at least five clear days before the meeting **or Cabinet Member Decision Day**. If an item is added to the agenda after publication, this will be included on a supplementary agenda (where reports are prepared after the summons has been sent out. The Monitoring Officer shall make each such report available to the public as soon as the report is completed and sent to Councillors) which will be open to inspection from the time the item was added to the agenda.

6. **Background papers**

8.1 List of background papers

The author of the report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in the report author's opinion:

- a) Disclose any facts or matters on which the report or an important part of the report is based; and
- b) Which have been relied on to a material extent in preparing the report;

But do not include published works or those which disclose exempt or confidential information (as defined in Paragraph 9)

8.2 Public inspection of background papers

The Council will make available for public inspection for six years after the date of the meeting, one copy of each of the documents on the list of background papers.

- 8.3 Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection. Arrangements for inspection should be made through Democratic Services Team at the designated office and on the Council's website.

In the case of reports to the Executive **or Cabinet Member Decision Day**, the background papers will be published on the Council's website, subject to Paragraph 9 below. The Council may make a reasonable charge for access to background papers to be inspected at the Council's offices.

9. **Exclusion of access by the public to meetings and Cabinet Member Decision Days**

9.1 Confidential information – requirement to exclude the public

The public must be excluded from meetings **or Cabinet Member Decision Days** whenever it is likely in view of the nature of the business

to be transacted or the nature of the proceedings that confidential information would be disclosed.

A decision to exclude the Public is to be made by resolution of the meeting (or, in the case of a Decision Day, the Cabinet Member).

9.2 Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order or other information provided by a third party who is owed a statutory or common law duty of confidentiality.

9.3 Exempt information – discretion to exclude the public

The public may be excluded from meetings or Cabinet Member Decision Days whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed which falls into one of the seven definitions of information that is exempt from disclosure to the public and press which is at paragraph 9.4 below.

9.4 Meaning of exempt information

Exempt information means any information falling within the following seven categories (subject to any condition) as defined in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended):

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Information is not exempt information if it is required to be registered under:

- a) The Companies Act 2006;
- b) The Friendly Societies Act 1974;
- c) The Friendly Societies Act 1992;
- d) The Industrial and Provident Societies Acts 1965 to 1978;
- e) The Building Societies Act 1986; or
- f) The Charities Act 1993.

“Financial and business affairs” includes contemplated, as well as past or current activities.

4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority Employee means a person employed under a contract of service. “Labour relations matters” means any matters

specified in section 218(1) (a) to (g) of the Trade Union and Labour Relations (Consolidation) Act 1992.

These matters also apply to office holders as to employees.

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
 - a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - b) To make an order or direction under any enactment.
7. Information relating to any action or any action proposed to be taken in connection with the prevention, investigation or prosecution of crime.

Notes:

- a) Information falling within any of categories 1-7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992;
- b) Information which:
 - i) Falls within any of categories 1 to 7 above; and
 - ii) Is not prevented from being exempt by virtue of the condition is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information;
 - iii) Where the meeting will determine any person's civil rights or obligations, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article.

15. Procedures prior to public meetings and Cabinet Member Decision Days

- 15.1 The Council will give notice of the time and place of a public meeting by displaying it at the Council's offices and publishing it on the Council's website,
 - a) At least five clear days before the meeting; or

- b) Where the meeting is convened at short notice, at the time that the meeting is convened.
- 15.2 An item of business may only be considered at a public meeting:
- a) Where a copy of the agenda or part of the agenda including the item has been available for inspection by the public for at least five clear days before the meeting; or
 - b) Where the meeting is convened at shorter notice, a copy of the agenda including the item has been available for inspection by the public from the time that the meeting was convened;
 - c) Where an item which would be available for inspection by the public is added to the agenda, copies of the supplementary agenda and any report relating to the item for consideration at the meeting, must be available for inspection by the public when the item is added to the agenda.
- 16. Access to agenda and connected report for public meetings and Cabinet Member Decision Days**
- 16.1 A copy of the agenda and every report for a meeting will be made available for inspection by the public at the Council's offices and on the Council's website.
- 16.2 If the Monitoring Officer thinks fit, there may be excluded from the copy of any report the whole, or any part which relates only to matters during which, in the opinion of the Monitoring Officer the meeting is likely to be a private meeting.
- 16.3 A copy of the agenda item or report will not be available for inspection by the public until a copy is available to Members of the Council. Where the whole or of the part of a report for a public meeting is not available for inspection by the public:
- a) Every copy of the whole report or of the part of the report, as the case may be, must be marked "not for publication" and
 - b) There must be stated on every copy of the whole or part of the report
 - i) That it contains confidential information; or
 - ii) The description of exempt information by virtue of which the Cabinet is likely to exclude the public during the item to which the report relates.
- 16.4 Except during any part of a meeting during which the public are excluded, the Council will make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting.

- 16.5 Unless they contain confidential or exempt information, following a request made by a member of the public or on behalf of a newspaper and on payment being made of postage, copying or other necessary charge for transmission, the Council will supply to that person or newspaper:
- a) A copy of the agenda for a public meeting and a copy of each of the reports for consideration at the meeting;
 - b) Such further statements or particulars, as are necessary to indicate the nature of the items contained in the agenda; and
 - c) If the Monitoring Officer thinks fit in the case of any item, a copy of any other document supplied to Members of the Cabinet in connection with the item.

22. Inspection of documents following Executive decisions

- 22.1 Unless they contain confidential or exempt information, after a meeting of the Cabinet or its Committees **or Cabinet Member Decision Days** at which an Executive decision has been made, or after a Cabinet Member or an officer has made an Executive decision the Monitoring Officer must ensure that a copy of:
- a) Any record of the decision; and
 - b) Any report considered at the meeting **or Cabinet Member Decision Day** or, considered by the Cabinet Member or officer and relevant to a decision record or, where only part of the report is relevant to such a decision, that part must be available for inspection by members of the public as soon as is reasonably practicable, at the Council's offices, and on the Council's website.