

Cheltenham Borough Council
Cabinet – 18th October 2011
Constitution Working Group - Review of the Constitution
Part 3E Executive Functions

Accountable member	Cabinet Member Corporate Services – Colin Hay
Accountable officers	Borough Solicitor, Sara Freckelton
Accountable scrutiny committee	Economy and Business Improvement
Ward(s) affected	None specifically
Key Decision	No
Executive summary	<p>Cabinet is being asked to consider a revised Part 3E of the Constitution - Responsibility for Executive Functions. The revisions propose a fundamentally different approach on the basis that the functions delegated to Cabinet and Cabinet Members are prescribed in greater detail than at present, with those functions not so prescribed being exercised by Officers. This proposal provides greater clarity as to the functions exercised by Members and provides for more flexibility within the Officer delegations. The effectiveness of the proposed revisions is reliant upon sufficient safeguards elsewhere in the Constitution, particularly in Part 2 Article 13 (Principles of Sound Decision Making). Other parts of the Constitution will require significant review, consequent upon the proposed changes.</p> <p>This report is part of a comprehensive review of the Constitution which is being taken to Council for initial consideration on 10th October and for final approval as soon as possible, but, in any event, in time for implementation on or before start May 2012. Whilst Council will be asked to agree to the whole of the new Part 3 being incorporated in the Constitution, it will be for the Leader to allocate/delegate the Executive Functions in Part 3E.</p>
Recommendations	<p>That Cabinet</p> <ol style="list-style-type: none"> 1. Consider the proposed Executive Functions set out in the new Part 3E (appendix 2 to agenda item 10 Council 10th October); 2. Make any consequential recommendations to the Leader as to the final form of Part 3E
Financial implications	<p>There are no specific revenue or capital implications of this report.</p> <p>Contact officer: Mark Sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264123</p>

Legal implications	As contained in this report. Contact officer: Sara Freckleton, sara.freckleton@tewkesbury.gov.uk. 01684 272011
HR implications (including learning and organisational development)	The proposed changes will need to be communicated to members and officers once approved. Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 264355
Key risks	See attached risk assessment – Appendix 1

1. Background

- 1.1** A comprehensive review of the Council's Constitution was commenced last year to address both the Council's Action Plan approved in March 2010 and to recognise the fact that the last full review of the Constitution was in 2005.
- 1.2** The Constitution Working Group has considered a number of matters including a comprehensive review of Part 3 of the Constitution – Responsibility for Functions. Part 3E relates to Executive Functions which are functions allocated/delegated by the Leader.
- 1.3** The proposed overall approach to Part 3 will result in a requirement for consequential considerable amendment to other parts of the Constitution particularly the Articles (Part 2) in order to ensure that the decision-making is carried out transparently with robust safeguards. Therefore, on 10th October, Council will be asked to approve, in principle, the proposed revisions to Part 3 to enable the fully revised Constitution to be placed before the Council for approval once the Constitution Working Group is satisfied that all necessary amendments, including those needed to accommodate the outcome of the Overview and Scrutiny review, have been addressed.
- 1.4** Whilst Council will be asked, in due course, to agree to the whole of the new Part 3 being incorporated in the Constitution, it is for the Leader (and not Council) to allocate/delegate the Functions contained in Part 3E.
- 1.5** The new draft Part 3 is considerably shorter than the current Part 3. This is due to:
- (a) rewriting and shortening of much of the current text;
 - (b) transfer of a number of current tables/schedules to appendices to the Constitution;
 - (c) a fundamental change in approach to the allocation/delegation of functions to Officers.
- 1.6** The current Part 3 operates on the basis of those functions delegated to Cabinet and Cabinet Members being drawn in a wide sense and the delegated functions to Officers being closely prescribed. The new draft Part 3 is drawn on the basis of the functions delegated to Cabinet and Cabinet Members being prescribed in more detail than at present; Officers will then be able to exercise all other functions not so prescribed (and subject to certain safeguards as referred to below). This new approach potentially has at least two key benefits:
- greater clarity as to what the Functions of Members actually are;
 - a clearer and more flexible scheme of Officer delegation because Officers will simply exercise those Functions not allocated elsewhere in Part 3 and there will not be detailed line by line delegations which will quickly become out of date.

- 1.7** It will be important to build in safeguards to the new approach to Officer delegation. The proposed safeguards are fourfold:
- (i) the Leader or a Cabinet Member (in respect of an Executive Function falling within their portfolio) may direct in any particular case that an Officer shall not exercise their delegated power and that the matter shall be referred upwards to the Leader, the Cabinet Member or Cabinet for decision;
 - (ii) Key Decisions cannot be made by Officers except where the Chief Executive or an Executive Director is exercising their urgency powers;
 - (iii) all Officers must comply with the principles of sound decision making set out in Article 13 of the Constitution (these principles, which include the obligation to comply with Financial Rules and Contract Rules, are being reviewed to ensure that they are comprehensive and robust and an updated Article 13 will be referred to Council subsequently for approval along with the final version of Part 3);
 - (iv) where the Chief Executive, Executive Directors or Directors sub-delegate their Functions, they will be obliged to ensure that the empowered Officer is fully aware of the responsibilities and accountabilities that come with those Functions.
- 1.8** It should be noted that the description of Functions and service areas delegated to Officers reflects the Chief Executive's proposals to transfer some functions from the Director Operations to other Directors, principally the Director Wellbeing & Culture in readiness for the creation of the proposed local authority company with Cotswold District Council.
- 1.9** The proposed delegations to officers in Part 3E include provision for the Chief Executive and Executive Directors to undertake functions where other officers are absent or unable to act.
- 1.10** Appendix 3 to the Council report contains a draft table showing the Authority's current corporate (as opposed to operational) policies, plans and strategies. This document is cross referenced in the new Part 3 and is intended to set out which parts of the Authority are responsible for which policies, etc. and who the Lead Members/Officers are together with other information such as when the policy, etc. is up for review. The table includes those policies, etc. which comprise the Policy Framework, .i.e. those which are produced by the Executive and approved by Council. Some elements of the table remain to be populated.

2. Reasons for recommendations

- 2.1** To allow the opportunity for Cabinet to formally consider the form of Executive Functions
- 2.2** To ensure that Part 3E Responsibility for Executive Functions is clear, robust, transparent and flexible.

3. Alternative options considered

- 3.1** The retention of a similar approach to officer delegations as that in the current Part 3 was considered. The Constitution Working Group decided to pursue the revised approach in view of the benefits set out in section 1 above but also subject to the safeguards in that section.

4. Consultation and feedback

- 4.1** Consultation on the proposed revised Part 3E has taken place with Officers, the Constitution Working Group and informally with Cabinet Members.
- 4.2** If Members wish to make any further observations or comments on the Constitution, particularly any suggestions for amendment, then these can be made to any member of the Constitution Working Group (Councillors Les Godwin, Colin Hay and Duncan Smith) or to the Borough Solicitor/Monitoring Officer. The Working Group will continue to meet and would welcome any input from Members to inform the review.

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Appendix	1 – risk assessment
Background information	Council Constitution Report to Council 10 th October 2011

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	Legal risks of challenge to decisions and processes arising through occasional but not comprehensive review	Borough Solicitor	6/6/11	3	1	3	Reduce	Comprehensive review of constitution is being undertaken	12/10/11	Borough Solicitor	
	Risk of Officers decisions being made outside of due process	Borough Solicitor						Ensure robustness of the Decision Making principles in the Constitution Ensure that Officers sub-delegating that the Officers understand scope and obligations and accountability for their decisions	January 2012	Borough Solicitor Chief Executive	