

CABINET

URGENT BUSINESS DECISIONS 20th April 2010

Report of the Monitoring Officer

PURPOSE OF REPORT					
To ensure that a proper delegation is in place to enable urgent business decisions to be taken in respect of executive functions.					
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input type="checkbox"/>	Referral from Officer	<input checked="" type="checkbox"/>
Date Included in Forward Plan	N/A				
This report is public					

RECOMMENDATIONS

- (1) That with regard to executive functions, Cabinet delegates to the Chief Executive authority:
 - (a) To do all such things as are necessary in relation to all routine matters of day to day administration and management of the Council;
 - (b) To authorise any action necessary to protect the safety or welfare of individuals or the safety of property; and
 - (c) Where it is necessary for any function of the Cabinet to be discharged and it is impracticable or impossible by reason of urgency for the matter to be considered by the Cabinet, (of if a non-key decision, by the relevant portfolio holder) to take such action as he considers appropriate, in consultation, so far as practicable with the Leader and relevant portfolio holder(s).
- (2) That where action is taken under (c) above, the Chief Executive shall submit a report to the next Cabinet meeting recording the urgent circumstances which made the action necessary and detailing the action taken.
- (3) That the amendment to the Scheme of Delegation be reported to Council in accordance with Rule 1.4 of the Cabinet Procedure Rules.
- (4) That Cabinet notes that Council will be recommended to include in the Constitution a separate section on urgent business procedures, which will cover both executive and non-executive functions.

1.0 Introduction

- 1.1 At its meeting on the 21st January 2009, the Audit Committee considered a report entitled Democratic Renewal Phase 2. The report noted several issues for

consideration regarding the Constitution, in particular that the Urgent Business Procedures needed to be reviewed. The Audit Committee resolved that officers be requested to prepare a further report to the Audit Committee detailing the issues and options with regard to this issue, and other Democratic Renewal issues raised in the report. However, having reviewed the legal requirements, officers are of the view that it is necessary for Cabinet to approve the urgent business delegations in so far as they relate to executive functions, prior to Council approving the arrangements for non-executive functions and the consequent amendments required to the Constitution.

- 1.2 Officers are concerned that the arrangements and procedures for taking urgent business decisions are not set out as clearly as they might be, and are of the view that this needs to be rectified as soon as possible. The lack of clarity has arisen because various aspects of the procedure are spread throughout the Constitution in :
- Part 3, Section 15, paragraph 1.1 – delegation to the Chief Executive “to sanction emergency action, as set out in the rules of procedure for urgent business”.
 - Part 3, Schedule 2, paragraph 10 – responsibility of the Leader to prepare a quarterly report to Council setting out decisions taken under the Urgent Business Procedure
 - Part 4, Section 2, paragraphs 15,16 and 17.04 - the Access to information Rules)
 - Part 4, Section 4, paragraph 1.10 – the Cabinet Procedure Rules
 - Part 4, Section 5, paragraph 17 – the Overview and Scrutiny Procedure Rules
- 1.3 Whilst Section 1.1 of the current Scheme of Delegation to Officers gives the Chief Executive authority “to sanction emergency action, as set out in the rules of procedure for urgent business”, the Council’s rules of procedure for urgent business are not set out clearly in one place within the Constitution. It is constantly necessary to cross-reference the paragraphs referred to above, and the wording of some of these paragraphs is ambiguous. Further, the delegation to the Chief Executive does not specifically refer to executive functions.
- 1.4 It is important that there should be arrangements in place to enable urgent decisions to be taken where it is impossible or impractical for a decision to be taken through the normal decision making process, and it is recommended therefore that the delegation to the Chief Executive, both in respect of executive and non-executive functions be amended to clarify this. The delegation of non-executive functions is a matter for Council and will be referred to the Annual Council meeting. However, the delegation of executive functions is a matter for Cabinet, and it is intended that any amendments approved as a result of this report would be referred to Council for noting and for inclusion in the Council’s Constitution.
- 1.5 In order to clarify the Council’s urgent business procedures, officers will be recommending Council to include in the Constitution a separate section on the procedures, in so far as they relate to both executive and non-executive functions.
- 1.6 This proposals in this report deal only with urgent business decisions in so far as they relate to executive functions.

2.0 Proposal Details

- 2.1 In the interests of openness and transparency, it is recognised that the Cabinet’s normal decision making processes should be followed whenever possible, with key

decisions being included in the Forward Plan and considered at a meeting of Cabinet.

- 2.2 Non-key decisions are taken by individual Cabinet members. Currently, such decisions are published fortnightly, but with effect from the new municipal year, it is intended that decisions will be published weekly, to reduce any delay in decision making. If any delay is likely to be caused by the call-in process which would seriously prejudice the interests of the Council or the public, Rule 17 of the Overview and Scrutiny Rules will apply, and this will be recorded in the decision.
- 2.3 However, it is important to have in place a formal delegation to enable the Chief Executive to take urgent action in situations where it is impossible or impracticable for the normal decision making process to be followed. This should apply to both non-key and key decisions, as well as formally acknowledging the role of the Chief Executive in dealing with urgent routine matters. It is recommended therefore that Cabinet make a formal delegation of authority to the Chief Executive as follows:

“That with regard to executive functions Cabinet delegates to the Chief Executive authority:

- (a) To do all such things as are necessary in relation to all routine matters of day to day administration and management of the Council;
- (b) To authorise any action necessary to protect the safety or welfare of individuals or the safety of property; and
- (c) Where it is necessary for any function of the Cabinet to be discharged and it is impracticable or impossible by reason of urgency for the matter to be considered by the Cabinet, (or if a non-key decision by the relevant portfolio holder) to take such action as he considers appropriate, in consultation, so far as practicable with the Leader and relevant portfolio holder(s).

That where action is taken under (c) above, the Chief Executive shall submit a report to the next Cabinet meeting recording the urgent circumstances which made the action necessary and detailing the action taken.”

- 2.4 The statutory rules with regard to Access to Information and Overview and Scrutiny would apply to such urgent decisions. The Chief Executive could be called to account by the Overview and Scrutiny Committee for any actions or decisions taken under this delegation.

3.0 Details of Consultation

- 3.1 There has been no formal consultation, although examples of good practice have been sought from other local authorities, and the report has been written following discussions between the Head of Legal and HR (Monitoring Officer) and the Head of Democratic Services and the Principal Democratic Officer

4.0 Options and Options Analysis (including risk assessment)

- 4.1 Option 1 is to approve the proposed delegation as set out in the report.
- 4.2 Option 2 is to approve some other form of delegation that would enable the Chief Executive to take urgent decisions in respect of executive functions.
- 4.3 Officers would recommend that taking no action is not an option, as it is important for both legal and practical reasons for there to be a properly documented delegation to enable urgent action to be taken.

5.0 Officer Preferred Option (and comments)

- 5.1 The officer preferred option is Option 1, as it is felt that this will best meet the need for the Council's functions to be exercised efficiently and effectively in cases of urgency.

6.0 Conclusion

- 6.1 It is recommended that the delegation be approved and referred to Council for noting and including in the Scheme of Delegation and proposed urgent business section of the Constitution.

RELATIONSHIP TO POLICY FRAMEWORK

None directly related to this report.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None.

FINANCIAL IMPLICATIONS

There are no direct financial implications as a result of this report other than the cost of re-printing the relevant sections of the Constitution. This can be contained within the Democratic Services printing and stationery budget.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no comments to add.

LEGAL IMPLICATIONS

The process for making urgent business decisions must comply with the Local Government Acts 1972 and 2000 (as amended) and the Local Authority (Executive Arrangements) (Access to Information) (England) Regulations 2000, as amended. Amendments to the Constitution must be agreed by either Council or the Council Business Committee as set out in Article 15, on the recommendation of Audit Committee or the Monitoring Officer.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer and Deputy Monitoring Officer have both been involved in the drafting of this report.

BACKGROUND PAPERS

None

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