

**Review of Part 3 Section 2 of the Constitution
2 March 2016**

Report of the Monitoring Officer

PURPOSE OF REPORT

To enable Council to approve amendments to Part 3 Section 2 of the Constitution.

This report is public

RECOMMENDATIONS

- (1) That Part 3 Section 2 of the Constitution be replaced with the revised version appended to this report.**
- 1.0 Introduction**
- 1.1 The Constitution is constantly kept under review to ensure that it is up to date and compliant with the law and with best practice.
- 1.2 Part 3 of the Constitution deals with the responsibility for functions, and sets out the terms of reference of the Council, Cabinet and its Committees.
- 1.3 Section 2 of Part 3, which relates to Cabinet, has not been updated for a number of years, and on a recent review it has come to light that the section would benefit from substantial amendment.
- 1.4 The Section, as currently drafted, attempts to summarise the functions for which the Cabinet is responsible. However, as a matter of law, all the Council's functions are deemed to be executive functions unless otherwise specified in the relevant legislation. Accordingly, it is impossible to set out a definitive list of Cabinet functions.
- 1.5 It is better therefore not to seek to summarise the Cabinet's areas of responsibility in this Section, but rather to confirm that under the Local Government Act 2000, all functions are, by default, executive functions, unless there is express provision to the contrary in the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, or in other legislation.
- 1.6 The 2000 Regulations do, however, make provision for certain specified functions, sometimes known as "local choice functions", to be either executive or non-executive functions. Whilst the current Section 2 does broadly include some of these as Cabinet responsibilities, there is no clear statement as to

which of the local choice functions are to be exercised by Cabinet.

2.0 Proposal Details

- 2.1 In order to deal with the issues set out above, a revised version of Section 2 has been drafted, and is appended to this report. It does not make any practical changes as to how functions are exercised, but rather reflects the “executive by default” provisions of the Local Government Act 2000, and provides clarity in respect of those specified local choice provisions where the Council can choose whether a function is exercised by the Cabinet or by Council or one of its committees.

3.0 Details of Consultation

- 3.1 There has been no consultation, but the Monitoring Officer has reviewed the relevant sections of the constitutions of other councils in order to establish best practice.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 Council is advised that Section 2 of Part 3 is in need of updating, and is recommended to approve the revised version appended to this report, as this covers the legal requirements. It would be open to Council to make other amendments, provided that these were in accordance with the relevant legislation.

5.0 Conclusion

- 5.1 Council is recommended to replace Section 2 of Part 3 with the revised version appended to this report.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None directly arising from this report.

LEGAL IMPLICATIONS

The revised version meets the requirements of the relevant legislation.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None

Information Services:

None

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer as the officer responsible for the Constitution. An amendment to Part 3 of the Constitution may only be approved by full Council.

BACKGROUND PAPERS

None

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