

Amendments to the Constitution and Delegated Decision-making

Cabinet

Date: 22nd April 2020

Author:	Leader of the Council Chief Legal Officer (Monitoring Officer)
Wards:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 This report seeks Cabinet's support for changes to the Council's Constitution which includes necessary changes as a result of the ongoing global coronavirus Covid-19 situation.
- 1.2 It is usual practice for the Council to renew and update its constitution on an annual basis. The changes proposed seek to augment the Members' and Officers' ability to make decisions in a timely manner that can adjust to any external needs, especially the current response to the Covid-19 virus.
- 1.3 Efficient, transparent and accountable decision-making is central to the Member-led governance of the local authority.

2. Recommendations

Cabinet is recommended to recommend to Council that:

- 2.1 Council adopts the proposed changes to the Annual Council meeting to ensure that it is a civic occasion (see Appendix One).
- 2.2 The Chief Executive be authorised to undertake any delegation that Members have previously authorised at Annual Council on 17th May 2019 (Council Minute 11 2019/20 refers) and at Council on 20th February 2020 or reallocate these to other officers in order to ensure the efficient dispatch of the Council's business.
- 2.3 Council adopts the updated the Scheme of Delegations to reflect current post titles and reporting lines along with update delegation numbers (see Appendix Two).
- 2.4 The Chief Legal Officer, in consultation with the Leader of the Council, the leaders of the other political party groups and the Chief Executive be authorised to add to or vary the wording and layout of the Constitution and its associated documentation to reflect legislative and procedural changes should this prove necessary for the efficient discharge of Council business.
- 2.5 Council approves the changes to delegated decision-making as set out in the report below (attached at Appendix Three).

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- 2.5.1 The augmented the wording of Article 14.06 to allow Officers to act once the Chief Executive has activated the “Gold command”/strategic response to an incident.
 - 2.5.2 To revise the scope of who may make key or strategic decisions in line with legislation.
 - 2.5.3 To permit delegated decisions that are neither high profile nor contentious and which would otherwise have been made and publicised through the Council’s website using Cabinet Member Briefing Notes to be made, recorded, and made public via the Officer Decision Note process.
 - 2.6 The Chief Legal Officer be authorised on behalf of Council to grant a leave of absence for reasons relating to Coronavirus Covid-19 to any Councillor who may apply.

Cabinet is recommended to

- 2.7 To approve the use of electronic signatures from councillors’ registered email addresses to sign or provide consent for the exercise of Cabinet Members’ and Officers’ delegated powers.
- 2.8 Note the Leader of the Council can act in respect of any executive powers and responsibilities as set out in legislation.

3. Detail

Making Annual Council a Civic Event

- 3.1 Members reviewed a report at Corporate Governance Review Working Group on 11th March 2020, which recommended that the business at Annual Council be limited almost exclusively to the civic functions of mayor making. The Working Group noted that Standing Orders already excluded motions and petitions for debate at Annual Council and agreed that public questions and Standing Order 15 questions could also be removed. However, the Working Group emphasised that should there be urgent business that required a Council meeting, one could be requested of the Mayor or, as permitted by the Local Government Act 1972, and as set out in the Constitution, requisitioned by an appropriate number of Members.
 - 3.1.1 Members are invited to approve the changes to Council Standing Orders relating to Annual Council as attached at Appendix One.

Updating the Scheme of Delegations (part 8 of the Constitution)

- 3.2 The law and the Constitution already provide for a wide range of delegations to Officers to make decisions. Members exercise oversight of this firstly through the

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annual review and adoption of the constitution and secondly through the consultation process as part of the use of those delegated powers. The latter has come to mean using a Cabinet Member Briefing Note although the Current constitution only prescribes this method for a limited number of circumstances.

- 3.3 The format of the Scheme of Delegations is also historical and reflects a time when the Council's officer structure was not as dynamic as it is now to face ongoing challenges to meet rising expectations, higher demand, and more limited finances. As Members will be aware, the Chief Executive as head of paid service already has the power to rename posts and reallocate functions in order to deliver the policies and priorities set by Councillors.
- 3.4 Members are invited to support the following amendments, which are set out in full in a track-changed document attached at Appendix Two:
- 3.4.1 Authorise the Chief Executive to undertake any delegation that Members have previously authorised at Annual Council on 17th May 2019 (Council Minute 11 2019/20 refers) and at Council on 20th February 2020 or reallocate these to other officers in order to ensure the efficient dispatch of the Council's business.
- 3.4.2 To update the Scheme of Delegations to reflect current post titles and reporting lines without changing the delegation numbers.
- 3.4.3 The Chief Legal Officer, in consultation with the Leader of the Council, the leaders of the other political party groups and the Chief Executive be authorised to add to or vary the wording and layout of the Constitution and its associated documentation to reflect legislative and procedural changes should this prove necessary for the efficient discharge of Council business.

Reviewing the Council's Decision-making processes

- 3.5 The Council derives its formal decision-making processes from statute, regulations, and local practice and these are set out in the Constitution. Although the Council adopted the strong leader-Cabinet executive model on 16th December 2011 (Council Minute 87 refers), the decision-making processes were not updated at that time and all key or strategic decisions (as defined in Article 13 of the Constitution) are reserved to Cabinet alone.
- 3.6 Legislation permits the Leader of the Council to delegate making decisions, including key ones, to Cabinet, Cabinet Members, or senior officers (The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012). Currently, the Constitution excludes the ability to delegate key or strategic decisions (as defined in Article 13) and reserves them to a meeting of Cabinet (Paragraphs 3 and 4, Responsibility for Functions, Part 3 of the Constitution).
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The Localism Act 2011 and subsequent secondary legislation also provides the ability to delegate decisions to officers.

- 3.7 The local authority is now involved in numerous partnerships with other public agencies as well as with central government. These may require the local authority to take decisions within time constraints that would allow for Scrutiny, but not the full Cabinet-based approach.
- 3.8 If Members are supportive of the proposals to allow more flexibility in how the Council makes key or strategic decisions, it would also be necessary to update the reference in the Responsibility for Functions (part 3 of the Constitution). The amendments would retain transparency and because all key and strategic decisions would have to be listed in Cabinet's work programme and forward plan 28 clear days before a decision is made.
- 3.9 Where the decision was urgent, the Constitution's Special Urgency rules would continue to apply. These include obtaining the Chair of Scrutiny's consent that the decision is urgent, reporting the decision to the next meeting of Cabinet, and at least once a year, reporting on the use of Special Urgency to Council. Otherwise all delegated Cabinet decisions would still be liable to call-in under the Council's existing procedures.
- 3.10 Members are also invited to review the scope of delegated decision making powers to officers. Article 14.06 (Part 2 of the Constitution) provides the existing delegation to the Chief Executive, Corporate Directors, Directors and Heads of Service to carry out operational, management and administration functions within their areas of responsibilities. The Article lists a number of specific areas in which officers can act, but specifies this "... when required under Civil Contingencies and emergency planning legislation". Other local authorities have more explicit delegations to cover emergency circumstances.
- 3.11 Given that the any pandemic such as the ongoing Covid-19 Corona virus may have a number of infection peaks, each of which could adversely affect the ability of Members and Officers to make decisions, Members are invited to consider adopting the augmented wording to Article 14.06 as set out in Appendix Three
- 3.12 With regard to how the delegated powers in Part 8 of the Constitution are authorised, the Constitution adopted in May 2019 states the following. "...A Cabinet Member Briefing Note should be used when officers are to make decisions of a "high-profile" or potentially contentious nature and where the agreement of the Cabinet Member with portfolio responsibility for the service concerned is felt to be necessary either for the use of the delegated power or to confirm that the decision should not be made at Member level. However, custom and practice has evolved into the use of a Cabinet Member Briefing Note as a means of exercising all powers in Part 8, and has added an additional and

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unintended level of bureaucracy to decision making. It is therefore intended that decisions that are not 'high profile' or contentious in nature shall be made using the. Officer Decision Notices to record these and make them public where required.

- 3.13 To allow the process to reflect what the current constitution says as well as to ensure both efficient and accountable decision-making, Members are invited to support the following proposals: The full, track-change text is attached at Appendix Three
- 3.13.1 To augment the wording of Article 14.06 to allow Officers to act once the Chief Executive has activated the "Gold command"/strategic response to an incident.
- 3.13.2 To clarify the consultation and endorsement process required so that it is proportionate and permits electronic signatures.
- 3.13.3 To revise the scope of who may make key or strategic decisions in line with legislation, to permit the Leader of the Council to determine whether they shall be made by Cabinet, a Cabinet Member, or a senior officer.
- 3.13.4 To permit decisions that are neither high profile nor contentious and which would otherwise have been made and publicised through the Council's website using Cabinet Member Briefing Notes to be made, recorded, and made public via the Officer Decision Note process.
- 3.14 The key principles behind any changes to the delegations are that the Leader or designated Cabinet Members must be consulted, the scope of any delegations needs to be proportionate, and that the decisions must be documented appropriately.

Granting Leave of Absence to avoid disqualifying Members

- 3.15 Under Section 85(1) of the Local Government Act 1972, if a councillor does not attend a meeting for six months, her or his seat can be declared vacant unless that councillor had obtained approval from Council to be absent prior to this six-month deadline. Previously, Council has made such a decision as a collective body (Council Minute 70, 8th November 2017 refers).
- 3.16 In the current medical emergency, given that meetings may be cancelled, Members may have to self-isolate, or Members may have additional care duties at short notice that last for a period of time, there is a risk that a councillor could by accident fail to attend a meeting in six months. To avoid this possibility it is recommended that Cabinet recommends to Council that

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3.16.1 The Chief Legal Officer be authorised on behalf of Council to grant a leave of absence for reasons relating to Coronavirus Covid-19 to any Councillor who may apply.

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3.18.1

Financial Procedure Rules and Contract Standing Orders – Part 4 of the Constitution

3.19 In order to comply with legislation and regulation, the Council has adopted necessary rules to regulate its financial management and procurement processes. These provide clear guidance for staff and ensure that there is adequate transparency and accountability for all financial transactions.

3.20 As part of the national response to the ongoing Covid-19 emergency, the government has issued Procurement Policy Note 01/20 updating the rules on how the Council may procure goods and services. These rules could be subject to further amendment and at short notice.

3.21 Given that the local council spends a considerable amount on goods and services and in order not to delay any this process so as to support those suppliers, Members are invited to approve the following recommendation.

3.21.1 The Corporate Director of Finance and Assets, in consultation with the Leader of the Council, the Cabinet Member for Finance, and the Chief Legal Officer, be permitted to review and update the Council's Financial Procedure rules and Contract Standing orders

Other Changes to decision making processes and issues

3.22 It is custom and practice for Cabinet Members to sign Cabinet Member Decision Notes and Briefing Notes. Given the current medical advice for people to avoid coming to offices, it seems prudent to permit the use of electronic signatures.

3.23 The Electronic Communications Act 2000 makes provision for the use of Electronic signatures. This legislation also enables the Council to complete contracts and deeds by electronic means. It is considered appropriate to review this and to implement processes to facilitate this to make provision for the immediate need to avoid coming into offices and to streamline processes to provide for efficient modern and effective services.

3.23.1 It is therefore proposed that the Chief Legal Officer and the Corporate Director of Finance and Assets be authorised to review and if appropriate

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to implement suitable proposals for the completion of documents by electronic methods, subject to approval of any proposals by the Leader, the Cabinet Member for Finance, Education, and Skills, and the Cabinet Member for Customer Services and Organisational Excellence.

- 3.24 For the purpose of identity, the registered email address used for such electronic signatures shall be Members' Council (@swindon.gov.uk) addresses.

4. Alternative Options

- 4.1 Members could choose not to recommend the changes to the Council's Constitution. However, this could adversely affect the authority's ability to respond effectively in a timely manner.
- 4.2 Members could choose not to recommend the changes to Council Standing Orders. This would run counter to the practice of making Annual Council a civic spectacle.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no specific financial or procurement implications from this report. Any proposed changes to financial procedure rules will address those issues at that time.

Legal and Human Rights Implications

- 5.2 It is important that the Constitution enables the Council to operate in an efficient effective and modern and way that is open and transparent. The proposed changes to the Constitution enable the Council to do this and also provide the ability for the Council to provide appropriate and swift responses to emergency situations.
- 5.3 Legal and human rights implications have been taken into account in preparing this report. It is considered that the recommendations are compatible with Convention Rights.

Climate Change Impact

- 5.4 The proposals would not bring a change in service delivery and Officers believe that there is no expected effect on the Council's carbon footprint.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.5 None.

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Diversity Impact Assessment

- 5.6 No Diversity Impact Assessment (DIA) has been undertaken as this report proposes no change in services. Any formal decisions will consider the need for a DIA as it might affect any of those in the statutory protected characteristics or the locally adopted additional categories of children in care and care leavers (Cabinet Minute 54, 4th December 2019 refers).

Risk Management

- 5.7 None.

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None.

8. Appendices

- 8.1 Appendix One: Draft Standing Orders (Part 4 of the Constitution) with and without track changes
- 8.2 Appendix Two: Draft Scheme of Delegations (Part 8 of the Constitution) with and without track changes
- 8.3 Appendix Three Draft Amendments to Decision Making (Parts 2 and 3 of the Constitution) with and without track changes

8.4

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

- 9.1 This is not a Key Decision and is not included in the Cabinet Work Programme and Forward Plan.