

PLYMOUTH CITY COUNCIL

Subject: Amendments to the Constitution
Committee: Council
Date: 22 June 2015
Cabinet Member: Councillor Smith
CMT Member: David Shepperd, Monitoring Officer
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Key Decision: No
Part: I

Purpose of the report:

This report proposes revisions to the Constitution following the senior management restructure; to create a separate part of the Constitution concerning delegations to officers; to include additional information about access to information for ease of reference; to update the Policy Framework to reflect changes in practice; and to include information about the Leader's scheme of delegation via a hyperlink.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

The new changes will aid transparency and improve access to the democratic process.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:

None directly arising

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

No implications.

Equality and Diversity:

No implications.

Recommendations and Reasons for recommended action:

That Council agrees the constitutional amendments in Appendices A to D of the report.

Reasons:

As set out in the report.

Alternative options considered and rejected:

None

Published work / information:

Plymouth City Council's constitution

Sign off:

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Has the Cabinet Member(s) agreed the content of the report? Yes													

Proposals

- a) The Monitoring Officer has reviewed the Constitution in light of decisions taken by Council in the course of the administrative year and proposes the revisions appendices A to D in order to increase transparency and reflect changes within the Council.
- b) The revisions include the following:
 - 1 A redraft of the sections of the constitution that refer to the Leader's scheme of delegation (Article 11, 'Decision Making' and Part C, 'Responsibility for Executive Functions') so that it is easy to separate the changes made by the Leader from time to time from the remainder of Part C of the Constitution which describes the way in which delegations work. This would allow future changes to the Leader's scheme to be included by way of a hyperlink in the constitution and avoid the need to change two documents with the risk that this could lead to mistakes. (See Appendix A of this report.)
 - 2 An update to the Policy Framework (Appendix One of the constitution) to reflect changes in legislation and practice. (See Appendix B of this report.)
 - 3 Additional information about access to information (Part F of the constitution) to present a fuller picture of the requirements of the legislation for ease of reference. (See Appendix C of this report.)
 - 4 Amendments required as a result of the senior management restructure and to create a separate part of the Constitution (at the start of Part H) dealing with delegations to officers, for ease of reference. Also, consequential amendments to Part E, 'Committees' terms of reference' and legal matters in Article 12, 'Finance, Contracts and Legal Matters' and Part H, 'Legal Standing Orders'. (See Appendix D of this report.)
- c) On 8 June, the Constitutional Review Group considered the proposed revisions and recommended that Council agrees the constitutional amendments in Appendices A to D of this report.

Article 11 – Decision Making and Delegation of Functions

(Amendments in red)

11.1 Responsibility for decision-making

The Council will issue and keep up to date a record of the responsibility of the Council, the Leader, the Cabinet, Committees, Cabinet members and individual officers for particular types of decisions or decisions relating to particular areas or functions.

11.2 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Consultation and due consideration of professional advice from officers;
- (c) Respect for human rights;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes; and
- (f) Explaining what options are available and giving reasons for the decisions taken.

11.3 Types of decision

The law divides a council's work into three categories:

- Council responsibilities – these are the responsibility of Council and are set out in Part B or delegated to a Committee, a sub committees or an officer;
- Executive responsibilities – these are the responsibility of the Leader and are set out in the Leader's scheme of delegation;
- Local choice responsibilities – Council has decided that these will be the responsibility of the Leader.

11.4 Full Council and key decisions

- (a) Full Council decisions:

Decisions relating to the Council Functions listed in Part B section 1 will be made by the Full Council and not delegated.

- (b) Key decisions:

Decisions relating to an executive function which would:

- result in the council spending or raising annual income by more than £500,000 (or more than £2,000,000 if that is the total cost of a contract award)

or

- result in the council saving more than £1,000,000
- or
- result in the council saving less than £1,000,000 and the saving will have a material impact upon service provision such as a significant change or a cessation of service delivery and associated staff redundancies or a significant impact on customers
- or
- have a significant impact on communities living or working in two or more wards.

A decision maker may only make a key decision in accordance with the requirements of the [Cabinet Procedure Rules](#) set out in Part C of this Constitution.

11.5 Delegation of responsibilities

Council delegates some of its responsibilities to a Committee or an officer. The Leader can delegate some of his or her responsibilities to the Cabinet a committee of cabinet, an individual cabinet member or an officer in accordance with the officer scheme of delegation. Council and the Leader cannot delegate to each other.

11.6 How Delegation Works

Council and the Leader can at any time take back responsibilities they have delegated or decide to delegate them on certain conditions.

Council and the Leader can also decide to delegate further: responsibilities that the Leader has not already delegated can be delegated to the Cabinet a committee of the Cabinet, or to an officer; responsibilities that Council has not already delegated can be delegated to or a committee of Council or to an officer.

11.7 Interpreting the rules on delegation

When a responsibility is delegated in this constitution, so is the authority to do anything necessary to carry it out (unless it was forbidden when the responsibility was delegated). Executive and council responsibilities are carried out on behalf of the council and in the council's name.

11.8 Decision making by the Full Council

Unless otherwise stipulated, the Council meeting will follow the [Council Procedure Rules](#) in Part B when considering any matter.

11.9 Decision making by the Leader and Cabinet

Unless otherwise stipulated, the Cabinet will follow the [Cabinet Procedure Rules](#) in Part C when considering any matter.

11.10 Decision making by the Co-operative Scrutiny Board or Scrutiny Panels

The Co-operative Scrutiny Board and panels will follow the [Overview and Scrutiny Procedure Rules](#) in Part D when considering any matter.

11.11 Decision making by other committees and sub-committees established by the Council

Other Council committees and sub committees shall follow the [Committee Procedure Rules](#) in Part D when considering any matter.

11.12 Decision making by Council bodies acting as tribunals

The Council, a Councillor or an officer when acting as a tribunal or in a quasi judicial manner and determining or considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the Human Rights Act 1998.

Part C Responsibility For Executive Functions

(Delete the Leader's scheme of delegation and insert a hyper link to the Scheme)

I GENERAL

- 1.1 All the functions of the Council are executive functions except for:
- Those listed in Schedule I of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended); and
 - Those set out in this Constitution as being the responsibility of the Council or a body established by the Council.
- 1.2 Executive functions will be exercised by the Leader except where the matter is dealt with under joint arrangements or delegated to the Cabinet, a committee of Cabinet, an individual Cabinet member or an officer.
- 1.3 The Leader will discharge these functions in accordance with the Cabinet Procedures and the Access to Information Rules.
- 1.4 The Leader will make sure all necessary steps are taken to prepare the authority's budget, and those plans and strategies which constitute the authority's policy framework as set out in Appendix One of this Constitution, prior to their final approval and adoption by the Council. He or she will undertake this work in accordance with the [Budget and Policy Framework Procedure Rules](#) (see Part B).

2 THE LEADER'S SCHEME OF DELEGATION

- 2.1 The Leader is responsible for:
- appointing members of the Cabinet;
 - delegating executive responsibilities to the Cabinet;
 - delegating executive responsibilities to committees carrying out executive functions;
 - delegating executive responsibilities to individual Cabinet members;
 - allocating executive responsibilities to officers;
 - allocating executive responsibilities when no-one has responsibility for them.
- 2.2 The Leader can at any time take back responsibilities delegated to committees of the Cabinet, an individual Cabinet member or officer, or decide to delegate those responsibilities on certain conditions (i.e. the Leader can choose to exercise any powers in the Scheme of Delegation).
- 2.3 The Leader can also decide to delegate further responsibilities to committees of the Cabinet, individual Cabinet members or to an officer.
- 2.4 Executive responsibilities are carried out on behalf of the council and in the council's name.

3 OFFICER DELEGATIONS

See the Officer Scheme of Delegation of Functions in part H of the Constitution.

POLICY FRAMEWORK

(Additions in red)

Statutory Plans and Strategies

- Corporate Plan
- Licensing Authority Policy Statement – Gambling Act 2005
- **Plymouth Plan incorporating the:**
 - Local Development Framework (Documents)
 - Local Transport Plan
 - **Safer Plymouth Partnership Plan**
 - **Child Poverty Plan**
- Youth Justice Plan

(Note: the Health and Well Being Board is responsible for the Joint Strategic Needs Assessment)

Local Choice Plans and Strategies

- ~~All Our Futures (Plymouth's Strategy for the Over 50's)~~ (No longer exists)
- ~~Capital Strategy and Asset Management Plan~~ (No longer exists)
- Medium Term Financial Plan
- **Plymouth Plan incorporating the:**
 - Housing Strategy
 - Plymouth Economic Strategy
 - Waste Management Strategy
 - Children and Young People's Plan
 - **Vital Spark (Cultural Strategy)**
- ~~Investment in Children (comprising Strategy for Change and Building Schools for the Future)~~ (No longer exists)
- Licensing Policy and Taxi Licensing Policy

ACCESS TO INFORMATION: CATEGORIES OF EXEMPT INFORMATION

(This table to be included in Part F, Section 4.2.2 of the constitution)

Category	Condition
<p>1. Information relating to an individual</p>	<p>Information is not exempt information unless it relates to an individual of that description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> (a) where disclosure is prohibited by statute; or (b) where disclosure might involve providing personal information about individuals”, or (c) where disclosure might breach a duty of confidentiality; and (d) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>2. Information which is likely to reveal the identity of an individual</p>	<p>Condition as above.</p>
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding the information) “Financial or business affairs” includes contemplated, as well as past or current, activities.</p> <p>This category will include commercial and contractual interests.</p>	<p>Information is not exempt information if it is required to be registered by law e.g. Companies Act 1985, the Charities Act 1993 etc.</p> <p>Information is only exempt if and for so long as:</p> <ul style="list-style-type: none"> (a) disclosure of the amount involved would be likely to give advantage to a person entering into or seeking to enter into a contract with the Council in respect of property, goods or services whether the advantage would arise as against the Council or as against other persons, or (b) disclosure would prejudice the efficiency and effectiveness of the use of Council resources; or (c) disclosure of trade secrets and other information would, or would likely, prejudice the commercial interests of any person, including the Council; and (d) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information

<p>4. Information relating to any consultation or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority</p>	<p>Information is only exempt if and for so long as its disclosure to the public:</p> <ul style="list-style-type: none"> (a) would prejudice the Council in those or any other consultations or negotiations in connection with a labour relations matter; and (b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Information is only exempt:</p> <ul style="list-style-type: none"> (a) where a claim of legal professional privilege could be maintained in legal proceedings e.g. correspondence such as legal advice and assistance between the Council's Legal Services and its client; and (b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>6. Information which reveals that the authority proposes:</p> <ul style="list-style-type: none"> (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 	<p>Information is exempt only if and as long as:</p> <ul style="list-style-type: none"> (a) disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice order or direction is to be given or made; and (b) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Information is only exempt if its disclosure would, or would be likely to, prejudice:</p> <ul style="list-style-type: none"> (a) criminal investigation and proceedings; or (b) the apprehension or prosecution of offenders; or (c) the administration of justice; or (d) the assessment or collection of any tax or duty or of any imposition of a similar nature; or (e) regulatory enforcement; or (f) any civil proceedings; or (g) health and safety; or (h) information obtained from confidential sources; and (i) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.

Article 12 – Finance, Contracts and Legal Matters

(Amendments in red)

12.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the [Financial Regulations](#)

12.2 Contracts

Contracts made by or on behalf of the Council will comply with the [Contract Standing Orders](#).

12.3 Legal Proceedings

The management of the Council's legal affairs will be conducted in accordance with the [Legal Standing Orders](#). *(insert hyper link to Part H)*.

~~The Head of Legal Services is authorised to institute, defend or participate in any legal proceedings:~~

- ~~(a) — In any case where such action is necessary to give effect to decisions of the Council;~~
~~or~~
- ~~(b) — In any case where the Head of Legal Services in his/her absolute discretion considers or is advised that such action is necessary to protect the Council's or public's interests.~~

~~12.4 Authentication of Documents~~

~~Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Head of Legal Services or designee, unless any enactment otherwise authorises or requires, or the Council has given authority to some other person.~~

~~12.5 Common Seal of the Council~~

~~The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Services should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Services or designee.~~