

Taunton Deane Borough Council

Corporate Governance Committee – 23 September 2013

Change to Delegations – Part 3 of the Constitution

Report of the Legal and Democratic Services Manager

(This matter is the responsibility of Leader of the Council)

1. Executive Summary

Changes to the constitution are required following the Council's decision to proceed with a Joint Chief Executive to ensure that the post can operate effectively from the first day of operation.

2. Background

- 2.1. By virtue of decisions taken by the West Somerset Council and the Taunton Deane Borough Council on 22 July and 23 July 2013, respectively, it has been agreed that the current Chief Executive of Taunton Deane Borough Council will become a Joint Chief Executive of the two Councils under a Section 113 agreement under the Local Government Act 1972, with effect from 24 October 2013.
- 2.2. The role of Joint Chief Executive will include being the Head of Paid Service for both Councils. This is a statutory role and places the officer in question in charge of the staff/employees of the two Councils. It is therefore essential that the Constitutions of both Councils are checked to ensure that the smooth operation of the two authorities will not be affected/hindered by the agreement to have a Joint Chief Executive.
- 2.3. Particularly in the event of the two Councils approving a business case for joint management and sharing of services, the management of staff will be a vital component in securing the smooth transformation towards the sharing of management and services.
- 2.4. To ensure that matters are not unduly delayed appropriate terms of delegation will need to be applied for the Joint Head of Paid Service and it would be preferable if such powers of delegation were similar at both Taunton Deane and West Somerset to ensure consistency and an even

pace of delivery. In this regard the Monitoring Officers of the two Councils have been working closely together to try and ensure that this happens.

3. The proposed Changes

3.1 In terms of the Taunton Deane Borough Council Constitution, although the Head of paid Service already has delegated powers to deal with staffing issues the proposed amendments set out in Appendix 1 to this report set out clearly those delegations required in connection with staffing matters to make the position transparent and clear. The proposed amendments are set out in Appendix 1 to this report.

3.2 It is important to note that under both the proposed delegated powers there is the proviso that such action must be “within the approved budgetary provision”. When this is not the case a report will need to be made to Members to approve or otherwise any required additional expenditure.

4. Finance Comments

4.1 There are no financial implications in connection with this report.

4.2 The S151 officer has commented that it is important that the new post holder has the appropriate delegated powers to enable her to undertake the role of Head of Paid Service efficiently and effectively and I believe that the proposals set out in this report address this issue; I note that the proposed delegate powers are subject to any action incurring expenditure being within the approved budgetary provision to ensure good governance.

5. Legal Comments

5.1 The Council is required to keep an up to date constitution in order to ensure that its decision making processes and procedures are lawful.

6. Links to Corporate Aims

6.1 There are no specific links to the Corporate aims.

7. Environmental Implications

7.1 There are no specific Environmental implications in this report.

8. Community Safety Implications

8.1 There are no specific Community Safety implications in this report.

9. Equalities Impact

9.1 An Equalities Impact Assessment is not required in respect of this report.

10. Risk Management

10.1 A risk assessment is not required in this instance.

11. Partnership Implications

11.1 The Monitoring Officers of both councils have consulted each other in regard to the contents of this report in the interest of consistency and transparency across the two local authorities

12. Recommendation

12.1 The Corporate Governance Committee is recommended to recommend Full Council to approve the proposed changes to the Delegations included in the Council's Constitution.

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Appendix 1

TDBC Constitution

Part 3 Responsibility for Functions

1.0 Scheme of Delegations

- 1.1 Legally a local authority depends upon a series of statutes which in some cases give it a power (that is, a discretion) to do something, or, in others, a duty to carry out that function or service. Each power or duty is often made subject to various limits as to just how it is to be exercised.
- 1.2 Because of this statutory foundation for the work of local councils, it is important that we are always specific as to which statute we are using to achieve our purposes. Unless we make that clear, then it is difficult if not impossible for the community to hold us to account.
- 1.3 Apart from this “what and how”, we also need to say - for transparency and accountability purposes - “who” it is within the Council - that has the power to do something. This means that we must produce a “Delegation Scheme” describing these formal responsibilities.

2.0 Who?

- 2.1 To help understand what follows, there are a number of levels of decision-making under our Constitution. Each of these is reflected by the tables which follow later in this section.
- 2.2 First is **Full Council** itself. Full Council retains a range of higher level decisions - many relating to our overall strategies - or to the setting of our annual budget and of Council Tax. Some of these functions can legally **only** be undertaken at this highest level. With others, it has been this Council’s own choice to do so.
- 2.3 Next is the **Executive**. The law requires that the great majority of the Council’s decision-making **must only** be carried out by or through the Executive - either meeting together – or, in some cases, on an individual basis. The Act prevents other councillors making such decisions.
- 2.4 **Individual Executive Councillors** also have decision-making powers delegated to them.
- 2.5 Next comes a group of “**regulatory**” functions. Broadly, these are roles where the Council has the task of controlling the activities of individuals - often on an application-by-application basis. To deal with these detailed controls, parliament decided that special committees should be retained - **outside** the Executive. In our case this means we have, for instance, a Planning Committee and a Licensing Committee made up of elected members and which meet in public so as to hear the various opinions expressed about individual cases before them.
- 2.6 The Corporate Governance Committee has certain limited decision-making powers delegated to it by the Council. These powers are described later in Section 4 Appendix 1 Part J
- 2.7 The **Joint Head of Paid Service** will undertake the day-to-day management and operation of all staff in accordance with the policies and procedures laid down by the Council, including incurring expenditure within the approved budgetary provision.

2.8 Finally are **the officers**. The great bulk of day-to-day operational decision-making is delegated by the Council, or the Executive, or the Planning and Licensing Committees to our professional staff. They need these powers so as to enable them to provide the services of the Council in the most economic, efficient and effective way.

3.0 What?

- 3.1 Attached are a number of tables setting out the broad areas of our statutory powers and the activities and functions we are involved in.
- 3.2 **Section 1** is a list of those matters which remain either with the Full Council itself for decision or which are within its control - because the law either requires or permits it. The section also shows to whom these powers have been delegated (if at all) - whether to a committee or to an officer.
- 3.3 **Section 2** sets out those powers and duties which the law **excludes** from Executive decision-making - such as planning, licensing and staffing issues. These are listed as delegated to a committee or to an officer with any limits on those delegations also included.
- 3.4 **Section 3** lists those powers and duties which are ones which **only** the Executive can deal with - itself - or through the officers or area or joint committees. This covers the great majority of our powers and duties - with most operational decision-making continuing to be delegated to the Officers.
- 3.5 This part also lists these functions across a series of Portfolios. These reflect the current responsibilities of each of the current members of the Executive for the setting of the overall direction for these services. The extent of these Portfolios can be varied at the discretion of the Leader. The electronic version of this Constitution will describe the current positions.
- 3.6 **Section 4** describes the delegation arrangements to the Officers and the individual Executive Councillors. As with our current Delegation Scheme, most of the operational decision-making under these powers and duties is delegated on to the officers.
- 3.7 **Section 4 Appendix 1 Part A** sets out the current decisions delegated by the Planning Committee to the Growth and Development Manager or in his absence the Development Management Lead or the Building Control Manager
- 3.8 **Section 4 Appendix 1 Part B** describes the similar delegations made by the Licensing Committee to the Community Services Manager or in his absence the Licensing Manager.
- 3.9 **Section 4 Appendix 1 Parts C and D** set out similar delegations made by the Committee to the Community Services Manager and in his absence the Environmental Health Lead.
- 3.10 **Section 4 Appendix 1 Part E** sets out similar delegations made by the Council
- 3.11 **Section 4 Appendix 1 Parts F G H and I** describe powers that are only exercisable by Full Council.
- 3.12 **Section 4 Appendix 1 Part J** sets out the powers and duties of the Corporate Governance Committee.
- 3.13 **Section 4 Appendix 1 Part K** sets out the Proper Officers in respect of various Public Health Acts and Regulations.
- 3.14 **Section 4 Appendix 1 Part L** sets out the details of the staffing matters and the relevant delegations.

Section 1 The Powers of Full Council

- 4.1 The functions statutorily reserved to the Council are set out below in Column 1. Column 2 shows who else is involved - either as having full statutory powers delegated to them or as being the source of a recommendation to full Council.
- 4.2 Where a power is shown as delegated to an officer then that officer shall also have the power to re-delegate that power to another officer of the authority or to refer or remit it to another regulatory body of the Council for it to decide.
- 4.3 Where a regulatory power is shown as delegated to an officer, that power shall include the authority to enforce those regulatory powers using all the formal powers available to the Council under the relevant legislation.
- 4.4 Where a reference to a statutory power is made, then that reference shall include any secondary legislation and to any subsequent consolidating, amending or substituting legislation.

Function		If delegated - then to whom?
1	To set the " <i>Policy Framework</i> " and the " <i>Budget</i> " within which the Executive must operate. [Both these terms are defined below.]	Council - on the recommendation of the Executive or of the Scrutiny Committees.
2	In a limited range of cases - to make decisions about the discharge of an "executive function". This applies only to those cases where the decision-maker is considering an issue - which is not only:- (a) covered by the Policy Framework or the Budget, but also – (b) where the decision-maker is inclined to make it in a manner which:- <ul style="list-style-type: none"> • would be contrary to that Framework, or • would be contrary to/or not wholly in accordance with the Budget. 	Council - on the recommendation of the Executive, an Executive Councillor or of the Scrutiny Committees.
3	To exercise - through delegated powers - those "regulatory functions" (these are listed in detail at Appendix 1) which must not be within the remit of the Executive:- (a) Development Control; Building Control. Appendix 1 – Part A (b) Licensing and Registration Appendix 1- Part B (c) Food Safety Appendix 1 - Part C	Planning Committee; Growth and Development Manager, Development Management Lead, Building Control Manager, Solicitor to the Council. The Licensing Committee; Community Services Manager, the Licensing Manager and the Environmental Health Lead Officer Community Services Manager or Environmental Health Lead
	Function	If delegated - then to whom?

	<p>(d) Health and Safety at Work (this relates only to those functions which the Council exercises other than as employer) Appendix 1 - Part D</p> <p>(e) Electoral services Appendix 1 - Part E</p> <p>(f) Corporate Governance Appendix 1 – Part J</p> <p>(g) Staffing matters (other than those dealt with in Part 4H of the Constitution - the Standing Orders as to Employment of Officers). Appendix 1 – Part L</p> <p>(h) Ceremonial and Miscellaneous matters Appendix 1 – Part G</p>	<p>Community Services Manager.</p> <p>Electoral Registration Officer and Returning Officer.</p> <p>Monitoring Officer and S151 Officer</p> <p>Joint Head of Paid Service; Member of the Corporate Management Team, Strategic HR Manager and the Appointments Panel.</p> <p>Council on the recommendation of the Corporate Governance Committee</p>
4	To agree and/or to make significant changes to the terms of reference of the Planning Committee, the Overview and Scrutiny Committees	Council - on the recommendation of the Overview and Scrutiny Committees or the Planning Committee.
5	To decide on the number of seats to be allocated to each Party Group (or to independent councillors) in accordance with the “proportionality” rules in the Local Government and Housing Act 1989.	Council - on the recommendation of the Monitoring Officer.
6	To agree the arrangements for the appointment of the Joint Head of Paid Service and to note the Appointment Panel’s decision	Council - on the recommendation of the relevant Appointments Panel set up for that purpose.
7	To agree the arrangements for the appointment of the Monitoring Officer and the Section 151 Officer and to note the Appointment Panels’ decisions.	Council - on the recommendation of the Joint Head of Paid Service.
8	To confirm the dismissal of the Head of Paid Service, the Monitoring Officer or the Section 151 Officer.	Council - at the recommendation of the relevant Disciplinary Panel set up for that purpose and the recommendation of an appointed Independent Person (as referred to in paragraph 6 of the Officer Employment Procedure (Rule 8 - Part 4-H4).
9	To appoint the Leader of the Executive.	Council - on the recommendation of the controlling political group or groups of the Council.
10	To decide on the number of Executive Portfolios which the Leader may allocate.	Council - on the recommendation of the Leader.
11	To remove the Leader or other members of the Executive.	Council - in accordance with the procedure in Article 7.
12	To adopt the Constitution and to agree any major changes to it.	Council - on the recommendation of the Corporate Governance Committee
13	To approve any application to the Secretary of State in respect of a Housing Land Transfer.	Council - on the recommendation of the Executive.
14	To appoint and dismiss representatives to those outside bodies whose role is not closely linked to an Executive function.	The Legal and Democratic Services Manager - acting on the advice of the relevant Scrutiny Committee.
	Function	If delegated - then to whom?
15	To adopt/modify a Members’ Allowances Scheme.	Council - on the recommendation of a Panel of external members.

16	To change the name of the area, to confer the title of Honorary Alderman or the Freedom of the Borough.	Council - on the recommendation of the Leader of the Council
17	To make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation.	Council - on the recommendation of one of the Overview and Scrutiny Committees whose role covers the services affected.
18	To adopt any plan or strategy (whether statutory or non-statutory) which the Council has decided should be undertaken by itself rather than by the Executive.	Council - on the recommendation one of the Scrutiny Committees using the "call-in" mechanism in Part 4E of the Constitution.
19	To deal with any other matters which, by law, must be reserved to Council.	Council on the recommendation of the Monitoring Officer

Part L: Staffing matters

Function	Delegated to whom
To determine the council's establishment, numbers of staff, grading, remuneration and deployment and agree terms and conditions for the employment of staff subject to fundamental changes to the organisational structure being agreed by the Executive	Joint Head of Paid Service
To exercise all functions relating to health and safety in the Council workplace	Joint Head of Paid Service
To make changes to the allocation and composition of individual Corporate Management Team (CMT) member's responsibilities	Joint Head of Paid Service
In consultation with the Leader, to determine the annual salary increase to locally determined salary scales (positions with a salary above Grade L other than the Monitoring Officer and Section 151 Officer), provided that the cost of such is within the relevant overall budgetary provision	Joint Head of Paid Service
To determine all employment matters relating to members of CMT, excluding those dealt with in Part 4H of the Constitution – the Standing Orders as to the Employment of Officers.	Joint Head of Paid Service
To determine requests for flexible retirement by Members of CMT	Joint Head of Paid Service
To suspend a Member of CMT, if necessary, in connection with any disciplinary action	Joint Head of Paid Service
To appoint proper officers where such appointments are required as a matter of urgency	Joint Head of Paid Service
To appoint authorising officers for the purposes of covert surveillance operations	Joint Head of Paid Service
In relation to all posts below CMT level, to determine any increases in pension benefits and the waiving of actuarial reductions applied to employees who retire before the normal retirement age in accordance with the Council's approved policies	Member of CMT
Within approved budgets and in consultation with the Strategic HR Manager: (a) to determine all employment matters relating to staff on Grade A to L, including all market provision issues and the payment of honoraria, unless otherwise provided in the Council's policies;	Member of CMT

(b) to create additional posts graded below Grade L as may be required to achieve the Council's agreed level of service; (c) to approve variations to the Council's establishment; (d) to approve appropriate revised salary levels for posts where the existing salary grade is not sufficient to recruit an officer of the required calibre	
In consultation with the Leader, to approve any redundancies, retirements, secondments for all posts below CMT level in accordance with the Council's agreed policy and within approved budgets.	Member of CMT
In consultation with the Leader, to authorise covert surveillance (directed surveillance and covert human intelligence sources) in accordance with the Council's policies and the provisions of relevant legislation	Member of CMT
To grant leave of absence without pay for periods exceeding three months and special leave with pay on compassionate grounds	Member of CMT
To enter into agreements under section of 113 of the Local Government Act 1972 to place staff at the disposal of other councils or to receive the services of staff of other councils	Member of CMT
To determine applications from officers graded senior officer and above for permission to take up secondary employment	Member of CMT
To take disciplinary action against staff, including dismissal, in accordance with the Council's policies	Member of CMT
To determine requests for flexible retirement by staff below CMT level	Member of CMT
To authorise the attendance of officers at conferences, courses and seminars on behalf of the authority	Member of CMT
To consider complaints from members of staff in accordance with the Council's policies and take appropriate action	Member of CMT in consultation with HR Manager
To authorise the carrying forward of annual leave of staff from one year to the next	Member of CMT
To approve or remove designated casual or essential user car allowances	Member of CMT
To give approval to staff to attend training courses and day release courses in pursuit of relevant professional or other qualifications	Member of CMT
To authorise the acceleration of increments to staff within their salary scale until the top of the scale is reached	Member of CMT
To appoint Officers below CMT level within the approved establishment and amend the establishment, in consultation with the Service Managers, in accordance with the Council's existing policies and procedures	Member of CMT
Through each Service Manager, where appropriate, to authorise payments for exceptional overtime by officers on Scale Column point 29 and above	Member of CMT
Through each Service Manager to appoint staff on a temporary basis for a period not exceeding six months	Member of CMT
Through each Service Manager to deal with applications under the assisted car purchase scheme	Member of CMT
Through Service Managers take on staff under appropriate government-sponsored employment initiatives	Member of CMT
To approve applications for payment of staff removal expenses	Member of CMT
In consultation with the relevant lead councillor responsible for	Member of CMT

equality and diversity to make such minor amendments to the Equality and Diversity Policy Statement as may be deemed necessary	with responsibility for Equality and Diversity
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