

Modernising the Constitution

MEMBERS' WORKSHOP

24th JANUARY 2012

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Scheme of Delegation – Officers

Currently: Most delegations are to CEO who then passes the authority down.

Proposal : -

Generic delegations to CEO, Directors.

Specific delegations direct to Chief Officers/Heads of Service.

Framework for each of the above

e.g. Corporate Director Demographics, Wellbeing

- 1. To act as the Council's Statutory Director of Social Services in accordance with Section 6 of the Local Authorities Social Services Act 1970 in relation to the Council's Social Services functions, including social services for children. Arrangements for the discharge of this responsibility in relation to children's social services are contained in.....
- 2. The strategic and operational delivery and/or securing by the Council of Personal Social Services for Adults.
 - Adult services, including mental health, learning disabilities, older people, physical disabilities;
 - Performance and Financial Management, including complaints and representations relating to personal social services for adults;
 - Support services, including Human Resources;
 - Inter-agency and Partnership Working;
- Commissioning and contracting across all services.
- 3. In particular, to exercise those functions of the Council which relate to personal social services for adults under the appropriate Sections of the following Acts as amended or re-enacted.
 - National Assistance Act 1948
 - Disabled Persons (Employment) Act 1958
 - Health Services and Public Health Act 1968
 - Chronically Sick and Disabled Persons Act 1970
 - Supplementary Benefits Act 1976
 - Mental Health Act 1983
 - Health and Social Services and Social Security Adjudication Act 1983
 - Public Health (Control of Disease) Act 1984
 - Housing Act 1985
 - Disabled Persons (Services, Consultation and Representation) Act 1986
 - National Health Service and Community Care Act 1990 etc etc etc

e.g. Head of Planning, Regeneration and Regulatory Services

- To have the power:-
- 1. To Authorise in writing all officers of the Planning and Public Protection Department who may from time to time be employed to discharge the specific duties and functions delegated to the Head of Housing and Public Protection, subject to such officers being suitably qualified for the discharge of those duties and functions.
- 2. To undertake inspections, investigations, interviews, sampling, prohibitions, seizures, detentions, recording, service of notices, (including suspension notices), notifications, waivers, transfers, authorisations, licensing, registrations and legal proceedings as are within the purview of the Housing and Public Protection Department under the legislation applicable thereto set out below, together with any regulations made thereunder, and any amendments or additions thereto and to exercise all other relevant powers, including powers of entry provided under such legislation.
- **Legislation**
- Accommodation Agencies Act, 1953
- Administration of Justice Act, 1970
- Agriculture Produce (Grading and Marking) Act, 1928
- Agriculture (Miscellaneous Provisions) Act, 1968, 1972 and 1976
- Agriculture Act, 1970
- Animal Boarding Establishments Act, 1963
- Animal Health and Welfare Act, 1984
- Animal Health Act, 1981
- Animal Health Act 1998
- Animal Health Act 2002
- Animal Welfare Act 2006
- Anti-Social Behaviour Act 2003
- Anti-Terrorism, Crime and Security Act 2001
- Protection of Animals Act 2000
- Banking Act, 1987
- Breeding of Dogs Act, 1973 and 1991
- Building Act, 1984
- Business Names Act, 1985
- Cancer Act, 1939
- Caravan Sites and Control of Development Act, 1960

Overall limitations

- The scheme will not delegate to Officers:
- Any decision reserved to Full Council
- Any decision which by law cannot be delegated to an Officer
- Any decision expressly withdrawn from the Scheme at any time or by Cabinet.

Delegations to members

- Greater clarity in some areas, but retaining flexibility.
- Cabinet portfolios – review clarity, avoid duplication.

Examples of Specific Member delegation:

- Good clear example:
- **Lead Member for Modernisation and Improvement**
- Disposals of freehold interest in land where the estimated market value is between £30k and £500k, with the power to approve sale at less than market value where the undervalue does not exceed £100k. This delegation does not include the power to approve an undervalue for sales in the Lead Member's electoral division.

Examples of Specific Member Delegation

- Not so clear:
- Leader – specific delegation to appoint school governors
- But this also lies within the Lead Member for Education portfolio. Reliance may be on a general delegation not a specific.
- **Lead Members general delegations:**
- To make appointments to external bodies whose remit lies wholly within the Cabinet Member's portfolio to fill any vacancies that occur before the next Ordinary election of Councillors. This delegation does not include appointments to joint committees with other local authorities under section 101 of the Local Government Act 1972.

Council or Cabinet?

- Constitution currently reiterates the Regulations – not user friendly!
- Proposal:

Schedule Format

Will be lengthier!

But should provide clarity for Officers,
Members and the public.

Suggested format:

- **Responsibility for Functions**
- **Introduction**
- 1.1 This Part of the Constitution specifies the various responsibilities for functions of the Council.
- 1.2 It has been prepared in tabular format for ease of reference as follows:
- 1.3 **Table 1**
- Those functions which are "local choice" functions (i.e. they may, but need not, be the responsibility of the Cabinet).
- 1.4 **Table 2**
- Those functions which are the responsibility of the Full Council to discharge.
- 1.5 **Table 3**
- Those functions which are exercised by the Cabinet or the Full Council, depending on the circumstances.
- 1.6 **Table 4**
- Those functions which are the responsibility of the Cabinet.
- 1.7 **Table 5**
- **Delegations to Officers**
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- Sets out details of various powers or functions delegated to Officers of the Council.

Committee Terms of Reference

- Licensing – the list of powers needs updating due to Gambling Act
- Corporate Governance – receive reports on member attendance at meetings and training.
- Planning – a review of the powers to ensure up to date.

Contract Procedure Rules

Could be more flexible for 'Part B' services in particular Social Services procurement processes.

Clackmannanshire case has provided legal comfort that there are the flexibilities there which can aid efficiencies

Will avoid re-procuring a service just for the sake of it which may not produce any savings.

Contract Procedure Rules

- Tender Opening Committee – many Councils no longer have members in attendance.
- E- procurement will provide the safeguards against fraud/corruption.
- Feedback from Lead members is that they would welcome the option of attending or not, but providing there is independent oversight eg by another head of service or legal services.

Freedom of Information

- Formalised Panel
- Consistency of approach
- Knowledge of the legislation
- More likely to result in publication than individual departments making the decision not to disclose.

Members

- Attendance at meetings – steer from CGC that there should be expectations over and above the stat. minimum, but what?
- Modern.gov and publicity of attendance
- Mandatory training – CGC provided a steer on Planning and Code of Conduct as a minimum, member feedback suggests other areas also need to be mandatory, but what?
- Limit of gifts and hospitality

Members Role Descriptions

- Member

Members Role Descriptions

- Group Leader

Cabinet

- Appointments
- s.24 Local Government Act 2000

Self Regulatory Protocol

- Code of Conduct
- Clear breach = PSOW
- Sub threshold deal with locally via the Self Regulatory Protocol
- Copy has been provided in October to all Members
- Group Leaders also consulted.
- PSOW endorsed in principle.

Protocols

- Planning – already adopted by Full Council but should be incorporated within the Constitution. Principles are embedded.
- Outside Bodies (list to be reviewed)
- Members Access to Information
- Members Self Regulatory Protocol

Public Speaking

- At Cabinet and/or Full Council
- Outward looking Council
- Closer to the Community
- Notice period from the public eg 7 days
- Limitations – time limits and content
- Discretion on whether to allow

Wales Measure

- Will necessitate amending Constitution
- Duty to conduct a survey
- Remote attendance
- Annual reports by Members
- Timing of Council meetings/Family absence
- New Statutory post- Head of Democratic Services
- Democratic Services Committee
- Joint Overview and Scrutiny Committees

Continuous updating...

- A standing slot at Full Council/quarterly to update Council on changes.
- Continuous review
- Will deal with the Wales Measure as it is implemented.

Adoption

- Informal Council – was itemised on the 10th January but not dealt with due to time constraints.
- Full Council - aiming for 28th February but may be March date t.b.c

Group Exercise

- Each group will be given an issue.
- Each group to nominate a spokesperson
- As a Group consider your issues.
- One Spokesperson to report