

AMENDMENTS TO THE COUNCIL'S CONSTITUTION

Report of the Assistant Director of Law and Administration

Purpose of the Report

To report to the Committee

- a) for information purposes only the amendments to Section 4 of the Constitution which are set out in the Appendix hereto (Responsibility for Executive Functions), and to paragraph 5.9 of section 5 (Scheme of Delegation); and
- b) for the Committee to recommend to full Council the remaining amendments to the Council's Constitution set out in the Appendix, including the remainder of Section 5 in so far as it relates to non-executive functions. These amendments have been made by the Deputy Monitoring Officer under delegated powers.

Cabinet Responsibilities.

Under the Council's new executive arrangements it is the responsibility of the Leader of the Council to allocate the executive functions of the Council. The Leader has appointed the members of the Cabinet and their portfolios. Cabinet member responsibilities are contained in Section 4 of the Constitution and also paragraph 5.9. The Constitution is therefore amended accordingly and these amendments are reported to the Committee for information only.

The remaining changes have been authorised by the Deputy Monitoring Officer and are now brought to Committee for ratification and recommendation to full Council.

RECOMMENDED THAT:

- a) The changes to the Constitution set out in Section 4 of the Appendix hereto (Responsibility for Executive Functions) and paragraph 5.9 of Section 5 (Scheme of Delegation) and are noted by the Committee; and
- b) The remaining amendments to the Constitution set out in the Appendix are noted by the Committee and are now recommended to full Council for ratification.

Christine Wray
Assistant Director of Law & Administration
11th August 2009

Changes to Gloucestershire County Council Constitution by the Deputy Monitoring Officer

In the exercise of the powers of the Monitoring Officer set out in Article 15.02.1 of the Council's Constitution, in order to:

- secure the convenient, efficient and effective discharge of any function; and
- give effect to a decision of full Council; and
- clarify the effect of the Council's Constitution;

with effect from 13 July 2009, I make the changes to the Council's Constitution referred to below.

1. The Leader of the Council having allocated responsibilities for executive functions to those members of Cabinet appointed by him on the 24 June 2009 and having confirmed the delegation to officers as set out in the table headed "Particular Delegations to Officers" which follows paragraph 5.12, Sections 4 and 5 of the Constitution ("Responsibility for Cabinet Functions" and "Scheme of Delegation") shall be amended as set out in Annex A hereto.
2. Throughout the Constitution the term "Lead Cabinet Member" shall be amended to "Cabinet Member".

With effect from today's date I make the following changes:

3. There shall be added to the duties of the Overview & Scrutiny Management Committee in paragraph 3.10.4 of the Constitution:

"6. Making a report and recommendations to the Council with respect to local crime and disorder matters."

The reference in paragraph 14.2 of the Overview and Scrutiny Procedure Rules to crime and disorder being an excluded matter, shall be deleted, thus paragraph 14.2 will read:

" A local government matter is one relating to a local government function affecting the electoral area of the member or any person who lives or works in the area, unless it is an excluded matter. An excluded matter is a planning or licensing matter, one relating to an individual where a right of appeal exists or any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussed at a meeting of an overview and scrutiny committee."

4. In Sections D and E of the Financial Regulations, all references to "Executive Director" shall be amended to "Group Director".
5. In paragraph 20 of the Procedural Standing Orders, the reference to the National Code of Local Government Conduct, shall be deleted.

6. Article 2.02 shall be amended to state that the next regular election will be held in 2013.

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(C.A.L. Wray)
Assistant Director of Law & Administration & Deputy Monitoring Officer
Gloucestershire County Council

August 2009

SECTION 4 – RESPONSIBILITY FOR EXECUTIVE FUNCTIONS

- 4.1 In accordance with the Local Government Act 2000 (as amended) the Leader of the Council has determined that executive functions of the Council should be the responsibility of the Cabinet, individual members of which may take executive decisions within their area of responsibility, and officers.
- 4.2 The Cabinet is not responsible for approving the Council's budget or the policy framework. It is, however, responsible for leading the development of the budget and policy framework. The Cabinet is also responsible for making decisions on the delivery of Council services within the approved budget and policy framework in respect of any matter that is not reserved by law or under this Constitution to the full Council or another Council body.
- 4.3 In Gloucestershire, executive decisions can be taken by the Cabinet collectively, by Cabinet Members individually and by officers of the Council to whom powers have been delegated. Decisions will be taken in accordance with the Cabinet Procedure Rules, Access to Information Procedure Rules and the Policy Framework and Budget Procedure Rules.
- 4.4 Every Cabinet Member is assigned areas of responsibility by the Leader of the Council, as described below.

Area of responsibility	
4.4.1	Leader of the Council
1.	Overall responsibility for the Council
2.	Regional, National and International Affairs
3.	Strategic Partnership Relationships and relationships with key partners
4.	Corporate Planning
5.	Cross cutting policy development and monitoring
6.	Customer focus

4.4.2	Deputy Leader and Cabinet Member for Schools
1.	Any aspect of the Leader's responsibilities in his absence
2.	Corporate Performance management
3.	Schools issues
4.	Building Schools for the future
5.	National Challenge
6.	Home to School Transport
7.	Children with Special Educational Needs
8.	Gloucestershire Strategic Partnership
9.	Local Area Agreement

4.4.3	Cabinet Member – Children and Young People
1.	Lead Member for Children's Services in accordance with Section 19 Children Act 2004
2.	Young People's Services
3.	Commissioning for Young People's Services
4.	Joint Children and Young People's Strategy
5.	Child Poverty
6.	Children in care

7.	Narrowing the Gap
8.	Safeguarding (Children)
9.	Capital Finance
10.	Adoption and Fostering

4.4.4 Cabinet Member for Youth Services

1.	Playbuilder
2.	14-19 year olds
3.	Connexions
4.	Colleges
5.	Early Years and Child care
6.	Youth Support
7.	Children with Disabilities
8.	Children's Centres
9.	Youth Offending

4.4.5 Cabinet Member – Resources

1.	The Council's Finances
2.	Business Management: <ul style="list-style-type: none"> ▪ Human Resources ▪ Information and Communication Technology ▪ Corporate Property Management ▪ Procurement ▪ Legal and Democratic Services ▪ Finance ▪ Corporate Building Services ▪ Audit and Financial Standards ▪ Health and Safety

4.4.6 Cabinet Member – Adult Social Care

1.	Services to older people
2.	Services to adults with physical and sensory needs
3.	Commissioning, Strategy and Finance (social care)
4.	Supporting People
5.	Corporate Customer services
6.	The NHS
7.	Voluntary & Community Sector

4.4.7 Cabinet Member – Caring and Community Services

1.	Services to adults with learning disabilities
2.	Community Services including Libraries, Information and Lifelong Learning
3.	Mental Health
4.	Safeguarding (Adults)
5.	Corporate Community Cohesion & Equalities
6.	Operational Delivery & Outcomes
7.	Arts, Sport and Culture

4.4.8 Cabinet Member for Highways and Waste

▪	Gloucestershire Highways
▪	Flooding
▪	Waste Disposal (Waste Partnership)
▪	Waste Contract (Project Board)
▪	Road Safety

▪ Capital Programme
▪ Rights of Way
▪ Public/Community Transport
▪ Parking
▪ Traffic Management
▪ Subsidiary responsibility for:
▪ Regeneration projects
▪ LTP3
▪ Local Area Agreement (Environment)
▪ Joint Core Strategy/ SIDP

4.5.9 Cabinet Member for Planning, Regeneration and Communications
▪ Corporate Communications
▪ Strategic Planning (including Minerals and Waste planning)
▪ Joint Core Strategy and Strategic Infrastructure
▪ Development Plans (Strategic Infrastructure Delivery Plans)
▪ Other planning services
▪ Regional issues
▪ Regeneration Projects
▪ Transport – Local Transport Plan and Major Scheme Bids
▪ Climate Change and Sustainability
▪ Local Area Agreement (Environment)
▪ Archaeology and Countryside Conservation
▪ Travellers
▪ Subsidiary responsibility for:
▪ Economic Strategy
▪ Flooding
▪ Capital Programme

4.4.10 Cabinet Member for Community Safety and Economy
▪ Community Safety
▪ Gloucestershire Fire and Rescue Service
▪ Emergency Management
▪ Gloucestershire's Economy
▪ The Recession (including Council-wide issues)
▪ Europe affairs
▪ Trading Standards
▪ Coroners
▪ Registration Service
▪ Subsidiary responsibility for:
▪ Regeneration projects
▪ Strategic Planning and Transport
▪ Road Safety

4.5 Every area of responsibility shall include the Council's executive function of investigating and/or prosecuting suspected or actual criminal and civil acts relating to the executive functions referred to in the portfolio.

Note: Prosecution of suspected criminal acts are subject to authorisation by the Director of Law and Administration.

SECTION 5 - SCHEME OF DELEGATION,

5.1 The Council is required to make very many executive and non-executive decisions every day. It would be quite impracticable to make all or many of these decisions through full Council, the Cabinet and other Council bodies. The full Council, Cabinet and, under the Council's new executive arrangements from June 2009, the Leader, are able to delegate powers to the Cabinet, individual Cabinet Members and to officers. Such powers are called "delegated powers" and the distribution of responsibility amongst the Leader of the Council, Cabinet Members and officers for making decisions under delegated powers is set out in this Scheme. Such powers must be exercised in accordance with the conditions specified in paragraphs 5.2 to 5.8 below.

This scheme does not delegate to the Leader of the Council, Cabinet Members and officers:

5.1.1 Except under delegation CE1 any matter reserved to full Council (see Tables 1 and 2 of this Part of the Constitution)

5.1.2 Any matter which by law may not be delegated to the Leader of the Council, a Cabinet Member or officer.

5.2 Delegated powers must be exercised in accordance with:

5.2.1 The law

5.2.2 All of the rules, procedures, codes and protocols contained in the Council's Constitution

5.2.3 Council policy.

5.3 Before exercising delegated powers, the Leader of the Council, Cabinet Members and officers must satisfy themselves that the decision is:

5.3.1 Authorised by law and, if in doubt, will consult with the Director of Law and Administration

5.3.2 Within budget (allowing for such variance as may be permitted under the Council's Financial Regulations) and if in doubt will consult with the Group Director – Business Management.

5.4 Before exercising delegated powers the Leader of the Council, Cabinet Members and officers must consider whether it would be advantageous and/or prudent to consult with the Leader of the Council, another Cabinet Member or any other members of the Council and/or officer, and whenever they consult with another will carefully consider any response that they receive. In any event, consultation will always be required with all persons referred to in the column "Consultation under paragraph 5.4" in the table below headed Particular Delegations to Officers, and in accordance with paragraph 5.9.

5.5 Before exercising delegated powers officers will consider whether the use of a power might be regarded as sensitive or contentious by members of the Council and if it appears that this will be the case they will:

5.5.1 In respect of any executive function, consult with the Leader of the Council or Cabinet Member with responsibility for that area

- 5.5.2 In respect of any non-executive function, consult with the chair and other political groups' lead members of the committee having responsibility for that matter and any member of the Council whose electoral division will be affected by the exercise of delegated powers.
- 5.6 In the absence of a Cabinet Member or if a Cabinet Member is unable to or should not exercise a delegated power, the Leader of the Council may exercise that delegated power.
- In the absence of the Leader of the Council or if the Leader of the Council is unable to or should not exercise a delegated power or other power under the Constitution, any Cabinet Member or the Cabinet may exercise those powers
- 5.7 The officers named in this scheme shall be deemed to include any other officer of the Council that they authorise in writing to exercise delegated powers on their behalf provided:
- 5.7.1 An officer named in this scheme must maintain a written record of any other officer they have authorised to exercise delegated powers on their behalf, and any limitation that they have imposed on the extent and duration or other exercise of those powers in addition to those specified in this scheme.
- 5.7.2 A copy of the information specified in sub-paragraph (i) of this paragraph must be given to the Monitoring Officer before another officer exercises a power on behalf of a named officer, and the Monitoring Officer shall place this information on a register that, in accordance with section 100G of the Local Government Act 1972, will be maintained for inspection by the public.
- 5.8 The Leader of the Council and Cabinet Members in relation to all decisions they take and officers in relation to key decisions they take in the exercise of delegated powers must maintain a complete and permanent written record of their decisions, which must (as a minimum) include:
- 5.8.1 A dated record of that decision
- 5.8.2 A record of the reasons for the decision
- 5.8.3 Details of any alternative options considered and rejected at the time by the person when making the decision
- 5.8.4 A record of any conflict of interest declared by any executive member who is consulted in relation to the decision; and
- 5.8.5 In respect of any declared conflict of interest a note of any dispensation granted by the Standards Committee of the Council
- Note: These decision records are required to be available for public inspection after the decision has been taken, in the same way as cabinet papers*
- 5.9 There shall be delegated to the Leader of the Council and each Cabinet Member all executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution. In exercising such functions, duties or powers, the Leader and Cabinet Members will consult with the Group Director and Director or Head of any service area affected by their decision.
- 5.10 The functions powers and duties identified in the table below headed Particular Delegations to Officers are delegated to Officers of the Council. Any officer referred to in the Appropriate Officer column of the table below and to whom powers have

been delegated shall include any other person subsequently taking on that officer's responsibilities

- 5.11 The Group Director of Services to Children and Young People has responsibility for the statutory functions of the Director of Children's Services in accordance with section 18 of the Children Act 2004; and
- 5.12 The Group Director of Community and Adult Care is the officer designated as Director of Adult Social Services in accordance with section 6(A1) of the Local Authority Social Services Act 1970 (as Inserted by paragraph 2(2) of Schedule 2 to the Children Act 2004)

Particular Delegations to Officers

Decision Category No	Function, duty or power to be delegated	Appropriate Officer	Consultation under paragraph 5.4
CE1	To take any decision that could be taken by the Council, the Cabinet, any committee, or any officer (provided such action is taken in accordance with the law, Rules on Access to Information About the County Council's Business, and the Cabinet Procedure Rules)	Chief Executive	<p><u>Council function</u> – Chairman and Leader of the Council</p> <p><u>Cabinet function</u> - Leader of the Council or Cabinet Member as appropriate</p> <p><u>Committee function</u> - chairperson and lead members</p>
CE2	To be the Proper Officer of the County Council: section 270(3) of the Local Government Act 1972		
CE3	To fill casual vacancies on committees, in accordance with sections 15-17 of the Local Government & Housing Act 1989		Group leader of the political group entitled to appoint a member to any committee by virtue of any vacancy that has arisen
CE4	To be the Returning Officer for County Council elections and undertake the functions of the Council in relation to elections		

CE5	To permanently appoint, determine the terms of appointment, and terminate the appointment of all staff (except those officers within the responsibility of the Appointments Committee) under section 112 of the Local Government Act 1972 and to appoint on a temporary or acting up basis for up to 1 year, determine the terms of appointment, and terminate the appointment of, those officers within paragraph 2 of the duties of the Appointments Committee		
GDBM1	To be responsible for and do anything required for the proper administration of the financial affairs of the Council	Group Director - Business Management	
GDBM2	To make arrangements for the financing of the capital programme of the Council by borrowing, leasing or other arrangements		Leader of the Council or Cabinet Member as appropriate
GDBM3	The functions, duties or powers of the Pension Committee		
GDBM4	To formulate and issue general guidelines to officers on financial matters including insurance and the writing off of debts		
GDBM5	To determine arrangements for treasury management		
GDBM6	To make arrangements for the internal audit of the Council		
GDBM7	To manage the County Fund and all subsidiary accounts and any reserve or other fund		
GDBM8	To operate the Local Government Superannuation Regulations, including the exercise of discretion under those Regulations		
GDBM9	To implement national and local pay awards and increase payments under the Pension Increase Act		
GDBM10	To determine applications by staff for car loans under the Assisted Car Purchase Scheme		

GDBM11	To make finance leasing arrangements and authorise and make any other financial transaction including the borrowing and lending of money		
GDBM12	To authorise the writing-off of stock other than through fair wear and tear		
GDBM13	To manage the provision of information technology services to the Council		
GDBM14	To publish standards for the whole of the Council which will secure the efficient processing of information		
GDBM15	To effect adequate insurance cover for the Council		
GDBM16	To acquire and dispose of any interest in land and manage the Council's estate		
GDBM17	The functions of the Safety and Licensing Committee under paragraphs 2 and 3 of its terms of reference		
GDBM18	To exercise all other functions relating to the areas of responsibility of the Business Management Directorate This power shall include the power to do anything necessary to secure the proper management of the Council's human resources except for functions falling within decision category CE5 but shall not include decision category HLDS1 and 2		
GDComS1	The functions of the Safety and Licensing Committee except those within paragraphs 2, 3, 4, 6 and 7 of its terms of reference and decision categories HLDS1 and 2	Group Director Community Safety	
GDComS2	To exercise all other functions relating to the areas of responsibility of the Community Safety Directorate except decision categories HLDS1 and 2		
GDE1	To exercise the functions of the Commons and Rights of Way Committee as Local Highway Authority Commons and Rights of Way Committee terms of reference 3 to 18	Group Director – Environment	

GDE2	To be the Proper Officer in relation to functions under the Highways Act 1980		
GDE3	To exercise the functions falling within Planning Committee terms of reference 1 to 14 and 16 to 24, except decision categories HLDS1 and 2 of this Scheme of Delegation	Group Director - Environment (Note - where the Group Director is an officer whose responsibilities include any aspect of the management of any land or building to which an application made by the Council relates, or is responsible for a function (other than as planning authority) materially affected by any planning matter, this power is delegated to the Head of Planning and Development Services)	Director of Law and Administration
GDE4	To exercise the functions of the Traffic Regulation Committee (terms of reference 1 to 12) except those falling within decision categories HLDS1 and 2 of this Scheme of Delegation	Group Director - Environment	Director of Law and Administration
GDE5	The functions of the Safety and Licensing Committee under paragraph 6 of its terms of reference		
GDE6	To exercise all other functions relating to the areas of responsibility of the Environment Directorate except decision categories HLDS1 and 2 (although in cases when only an officer other than the Director of Law and Administration may institute proceedings the Group Director Environment may institute a prosecution once it has been authorised under HLDS2)		
GDCAC1	The functions of the Safety and Licensing Committee under paragraph 7 of its terms of reference	Group Director - Community and Adult Care	

GDCAC2	To exercise all other functions relating to the areas of responsibility of the Community and Adult Care Directorate except decision category HLDS1 and 2.		
GDCYP1	The functions of the Safety and Licensing Committee under paragraph 4 of its terms of reference	Group Director Services to Children and Young People	
GDCYP2	To exercise all other functions relating to the areas of responsibility of the Children and Young People's Directorate except decision category HLDS1 and 2		
HLDS1	To authorise the institution, defence withdrawal or settlement of any claims or legal proceedings, civil or criminal, the issue of cautions and to authorise the enforcement of any order made in those proceedings.	Director of Law and Administration	Director of any service area affected by such a decision
HLDS2	To authorise officers of the County Council to prosecute or defend or appear in any legal proceedings (NB the Director of Law and Administration will <i>authorise</i> every decision to prosecute or defend such proceedings, including those which by law may only be <i>instituted</i> by another officer).		
HLDS3	To authorise the withdrawal or settlement of any dispute between the Council and any third party, including those that have been referred to any statutory or non-statutory Tribunal or arbitrator (this includes authorising ex gratia payments not otherwise delegated)		Group Director and Director of any service area affected by such a decision
HLDS5	To be the local referee for disputes under the Local Government Pension Scheme		
HLDS6	To make payments or award other benefits under section 92 of the Local Government Act 2000 (payments in respect of maladministration and related discretionary payments)		Chief Executive Group Director and Director responsible for the service in respect of which a payment or other benefit is awarded

HLDS7	The functions of the Commons and Rights of Way Committee under paragraphs 1, 2 and 19 of its terms of reference		
HLDS8	To amend the Constitution in any way whatsoever in order to secure compliance with the law and the convenient, efficient and effective discharge of any Council function. Such amendment shall be reported to the Constitution Committee and reported to and ratified by the full Council (in respect of any non-executive function) or the Cabinet (in respect of any executive function)		Chief Executive and any Group Director and Director whose service is affected by any amendment to the Constitution
HLDS9	The functions of the Constitution Committee to advertise for, interview and appoint persons as members of an Independent Remuneration Panel.		Lead members of the Constitution Committee
GEN1	To enter into any contract for works and the supply of goods and services	Chief Executive and the Assistant Chief Executive, Group Directors, and Directors or Head of Service in relation to their service areas	
GEN2	To take any decision under the Regulation of Investigatory Powers Act 2000	Group Directors and Directors or Head of Service in relation to their service areas	
GEN3	To do anything that is required for the effective management of staff and other resources within each Directorate and Service of the Council		

SECTION 6 - GENERAL STATEMENT OF POLICY BY THE LEADER, THE FULL COUNCIL AND THE CABINET IN RESPECT OF THE DISTRIBUTION OF FUNCTIONS TO THE FULL COUNCIL, COUNCIL BODIES, CABINET MEMBER AND OFFICERS

The Council, the Leader and Cabinet intend that officers should be able to exercise any duty or power that could be exercised by them or any council body. Accordingly, where the law confers a function, duty or power on the authority, but no officer has been expressly authorised to exercise that function, duty or power under the Scheme of Delegation, the Council, the Leader, and Cabinet (in so far as it is within their remit) hereby authorise any Group Director, Director and any person authorised by any of them, to exercise that function, duty or power on behalf of the authority.

Note; Where an officer has been expressly authorised to exercise a function duty or power, only that officer and any other officer authorised in accordance with paragraph 5.7 of Section 5, can exercise that function, duty or power.