

# Constitution Committee - 27 January 2020

## Motions at Full Council

### 1. Introduction

- 1.1 At the previous Constitution Committee meeting, the question arose as to how County Council can best ensure that members fully understand the implications of a motion passing, with particular regard to costs, environmental impact and the effect on any protected group.
- 1.2 This issue is most likely to arise with regard to motions concerning Executive functions. The Local Government Act 2000 and regulations made under the act distribute responsibility for the Council's functions between the full Council and the Executive (the Cabinet). In some cases, the distribution of functions is specified by law, in others, it is a matter of local choice, determined by the Council's constitution. In the event of any contradictions between the law and the constitution, the law prevails. Any functions not specified by the law or the constitution are, by default, the responsibility of the Cabinet. It is therefore important that decisions relating to any function of the Council are taken by the appropriate body in order to avoid that decision being open to challenge.
- 1.3 At the last meeting, officers were asked to review other councils' to explore the criteria used by other councils for motions submitted to County Council. This report summarises the findings of the review, which looked at the constitutions of all 26 county councils, and offers some options for members to consider.

### 2. Gloucestershire County Council process for motions

- 2.1 The approach taken to motions within Gloucestershire County Council has evolved over time with the current iteration of the constitution placing few restrictions on the ability of the full Council to debate matters.
- 2.2 The only restriction on the subject matter of motions is that they must relate to issues which are the responsibilities of the council or which affect the county. The constitution allows for motions to address executive or non-executive functions.

- 2.3 If a motion relates to an executive function, council may refer it to the Cabinet either direct or via the relevant Scrutiny Committee, but there is no requirement in the constitution for council to do so (though Council must ensure that any decision it takes is within its powers).
- 2.4 Motions have to be submitted 5 clear working days before the date of the meeting, and current practice is that they are not accompanied by an officer report or any other written advice.
- 2.5 Amendments to motions can be (and frequently are) made on the day, and although these are usually submitted to Democratic Services in writing in advance of the meeting, this is not an absolute requirement. The Chair can require that an amendment be written out before allowing it to be discussed.
- 2.6 A maximum of 2 hours is allowed for motions to be debated.

### **3. Processes at other County Councils**

- 3.1 Gloucestershire County Council is not unusual in the existing approach it takes to motions. Most councils follow the same or broadly similar processes. However, there are a number of county councils that have processes which may help to ensure that the full implications of motions are understood before being passed. These fall broadly into three categories:
  - Providing written officer advice
  - Referring the motion to the Executive and/or relevant committee
  - Restricting the scope or subject matter of motions
- 3.2 Providing written officer advice - Two county councils have a mechanism written into the constitution for obtaining formal officer advice. At Buckinghamshire County Council, the Monitoring Officer has discretion to commission a technical investigation in response to any motion submitted, and to defer the motion to the following meeting if necessary, in order to allow that to be completed. The Monitoring Officer can also arrange a background briefing for members to provide advice on a motion. At West Sussex, the relevant Executive Director provides a briefing note to accompany all motions. However, it is worth noting that both these councils have a longer notice period for receipt of motions (8 days for Buckinghamshire; 17 days for West Sussex). Two potential forms of wording for the Constitution are provided at Appendix 1a and 1b (based on the Buckinghamshire and West Sussex constitutions respectively).

- 3.3 Section 100b of the Local Government Act 1972 requires that, in the interests of transparency in decision-making, all reports must be published at least 5 working days in advance of the Council meeting. As a result, if members were minded to implement this option, the deadline for submitting written notice of motions would need to be brought forward to allow officers the time to produce advice on the motion. 23 of the 26 county councils reviewed have a longer notice period for motions than Gloucestershire, ranging from 7 working days to 17 calendar days. Similarly, deferring items to later meetings (either of the County Council or of other council bodies) also provides additional time for officers to produce advice on the motion.
- 3.4 Referring the motion elsewhere - The default position of a number of Councils is that motions which relate to functions of the executive or another council committee are referred to that committee. In some councils, the decision as to whether to refer or discuss an item falls to the Chair. In others, there is an assumption towards referring an item, unless the council votes to discuss it.
- 3.5 For example, at Worcestershire County Council, when a motion that relates to an executive function is moved and seconded, the constitution allows for members to speak in support or against the motion, but following this debate, the motion is referred to Cabinet for consideration and determination. County Council can also refer motions about non-executive functions to the executive or the relevant council body in order for that body to consider the motion and report back to the next meeting of the Council. Appendix 1c provides a form of wording that would incorporate this procedure into Gloucestershire County Council's constitution.
- 3.6 Restricting the scope or subject matter - Other councils restrict the content of motions. Leicestershire County Council does not allow any motion which would have the effect of materially increasing the expenditure or reducing the revenue of the Council, unless in the form of a proposal that the matter be referred to the Executive. Staffordshire and Norfolk County Councils state that motions should not be about matters for which Cabinet is responsible (although in Norfolk's case the Leader may agree exceptions to this rule). East Sussex's constitution says that Council motions can only ask the cabinet to consider a particular course of action and must not bind cabinet.

#### **4. Amendments to Motions**

- 4.1 When considering how to ensure that members are aware of the implications of motions, members may also want to give consideration to the potential impact of amendments on those motions.

- 4.2 In Suffolk County Council, amendments to motions have to be submitted 2 days' in advance of the Council meeting. In all other cases, amendments can be made during the debate (albeit with a requirement from some councils that these are made in writing).
- 4.3 However, many of the mechanisms described in section 3 above would also have the effect of helping to ensure that any amendments take account of the available information.

## **5. Options**

- 5.1 The options available to the committee are:
- To recommend that Council amends the constitution to give the Chief Executive the discretion to commission a technical investigation or briefing on any motion received (using the wording provided in either Appendix 1a or 1b). If choosing this option, the committee may also wish to give consideration to extending the notice period for motions in order to allow time for such a report to be produced.
  - To recommend that Council amends the constitution so that motions relating to executive functions are referred to the Cabinet for determination (using the wording provided at Appendix 1c).
  - To leave the constitution unchanged
  - To ask that officers develop other mechanisms than those set out in this report.

## Appendix 1a:

### Changes required to introduce the option of Written Officer Advice on Motions – Option A

#### 10. NOTICES OF MOTION

##### 10.1 Notice

Except for motions which can be moved without notice under these Procedural Standing Orders and unless the Chair is of the opinion that the motion should be considered as a matter of urgency, written notice of motions for discussion at full Council meetings must be delivered to the Chief Executive not later than 10 a.m. five clear working days before the date of the meeting. Motions are not considered at the first annual meeting of a new Council. The Chief Executive will maintain a record of all motions submitted and the public may inspect that record except in respect of motions considered in the absence of the press and public.

##### 10.2 Where the Chief Executive has received a Notice of Motion, he/she will:

a) determine whether the issue requires a technical investigation which cannot be completed by the time of the Council meeting, in which case he/she will notify the Member or Members who have submitted the notice of motion that he/she has commissioned such an investigation and that the notice of motion will now be considered at the next but one meeting of the Council, and he/she will report for information to the next meeting of the Council the receipt of the notice of motion and the commissioning of the investigation;

b) where consideration of the notice of motion is not deferred for a technical investigation, determine whether a background briefing would be of assistance to Members and, if so, arrange its preparation and distribution to all Members with the agenda for the meeting or as soon as possible thereafter.

##### 10.23 Motion set out in the agenda for a meeting

10.23.1 Motions for which proper notice has been given under this Procedural Standing Order will be listed on the agenda in the order in which they are received;

10.23.2 Unless the Chair, in consultation with Group Leaders, decides otherwise, subject to Procedural Standing Order 10.8, there will be no time restrictions on motions from each political group (for the purposes of this Procedural Standing Order 10.2.2 only, all independent Councillors are considered as a political group);

10.23.3 If the Chief Executive considers that such a motion qualifies to be considered by the full Council in the absence of the press and public, the Chief Executive may decide appropriate agenda wording to avoid public disclosure of confidential or exempt information.

10.34 Scope

Motions must be about matters which are related to the responsibilities of the Council or which affect the County. The Chair's decision on whether or not a motion is relevant to the responsibilities of Council will be final.

10.45 Subject to Procedural Standing Order 10.9, unless the Chair, in consultation with Group Leaders, decides otherwise a motion that has been properly notified and which has been moved and seconded will be discussed by full Council at the meeting for which notice has been given (excluding the first annual meeting of a new Council).

10.56 If the motion relates to an executive function and whether or not it is discussed at full Council at that time, full Council may:

10.56.1 Refer the motion to Cabinet who will consider the matter in the light of any views expressed by the full Council and advise the full Council of its decision; or

10.56.2 Refer the motion to the relevant Scrutiny Committee who will consider the matter in the light of any views expressed by the full Council. Following consideration, the Scrutiny Committee will refer the motion to Cabinet, Leader of the Council or Cabinet Member who will consider the matter in the light of any views expressed by full Council and the Scrutiny Committee and advise the full Council of its or their decision.

10.67 If a motion is referred by full Council to the Cabinet or another Council body (or both under Procedural Standing Order 10.5.2) the proposer and seconder of the motion may attend the meeting of the Cabinet or other Council body (or both) and speak to the motion but not vote unless a Member of the Cabinet or other Council body.

10.78 If a motion is referred by full Council to the Leader of the Council or Cabinet Member (either directly or via a Scrutiny Committee under Procedural Standing Order 10.5.2) the proposer and seconder of the motion may attend the meeting of the Scrutiny meeting and speak to the motion but not vote (unless a Member of the Scrutiny meeting) and/or submit in writing to the Leader of the Council or Cabinet Member, their views on the motion.

- | 10.~~89~~ The total period of time spent on motions on the day of a meeting shall not exceed two hours. However, debate on motions may be extended beyond the two hour limit to allow those members who have indicated to the Chair, before the end of the two hour period, their intention to speak on the motion being debated at that time. The mover of the motion will then have the opportunity to sum up and the vote will take place. This Procedural Standing Order may not be suspended.
  
- | 10.~~910~~ In the event a motion has not been discussed at the meeting for which notice has been given, that notice of motion shall then be void.

**Appendix 1b:  
Changes required to introduce the option of Written Officer Advice on Motions  
– Option B**

**10. NOTICES OF MOTION**

**10.1 Notice**

Except for motions which can be moved without notice under these Procedural Standing Orders and unless the Chair is of the opinion that the motion should be considered as a matter of urgency, written notice of motions for discussion at full Council meetings must be delivered to the Chief Executive not later than 10 a.m. ~~five~~ ten clear working days before the date of the meeting. Motions are not considered at the first annual meeting of a new Council. The Chief Executive will maintain a record of all motions submitted and the public may inspect that record except in respect of motions considered in the absence of the press and public.

10.2 The relevant Strategic Director shall prepare a full briefing note on factual background information to the motion and shall circulate it to all members of the County Council not later than ten working days before the County Council meeting.

**10.23 Motion set out in the agenda for a meeting**

10.23.1 Motions for which proper notice has been given under this Procedural Standing Order will be listed on the agenda in the order in which they are received;

10.23.2 Unless the Chair, in consultation with Group Leaders, decides otherwise, subject to Procedural Standing Order 10.8, there will be no time restrictions on motions from each political group (for the purposes of this Procedural Standing Order 10.2.2 only, all independent Councillors are considered as a political group);

10.23.3 If the Chief Executive considers that such a motion qualifies to be considered by the full Council in the absence of the press and public, the Chief Executive may decide appropriate agenda wording to avoid public disclosure of confidential or exempt information.

**10.34 Scope**

Motions must be about matters which are related to the responsibilities of the Council or which affect the County. The Chair's decision on whether or not a motion is relevant to the responsibilities of Council will be final.



- 10.45 Subject to Procedural Standing Order 10.9, unless the Chair, in consultation with Group Leaders, decides otherwise a motion that has been properly notified and which has been moved and seconded will be discussed by full Council at the meeting for which notice has been given (excluding the first annual meeting of a new Council).
- 10.56 If the motion relates to an executive function and whether or not it is discussed at full Council at that time, full Council may:
- 10.56.1 Refer the motion to Cabinet who will consider the matter in the light of any views expressed by the full Council and advise the full Council of its decision; or
  - 10.56.2 Refer the motion to the relevant Scrutiny Committee who will consider the matter in the light of any views expressed by the full Council. Following consideration, the Scrutiny Committee will refer the motion to Cabinet, Leader of the Council or Cabinet Member who will consider the matter in the light of any views expressed by full Council and the Scrutiny Committee and advise the full Council of its or their decision.
- 10.67 If a motion is referred by full Council to the Cabinet or another Council body (or both under Procedural Standing Order 10.5.2) the proposer and seconder of the motion may attend the meeting of the Cabinet or other Council body (or both) and speak to the motion but not vote unless a Member of the Cabinet or other Council body.
- 10.78 If a motion is referred by full Council to the Leader of the Council or Cabinet Member (either directly or via a Scrutiny Committee under Procedural Standing Order 10.5.2) the proposer and seconder of the motion may attend the meeting of the Scrutiny meeting and speak to the motion but not vote (unless a Member of the Scrutiny meeting) and/or submit in writing to the Leader of the Council or Cabinet Member, their views on the motion.
- 10.89 The total period of time spent on motions on the day of a meeting shall not exceed two hours. However, debate on motions may be extended beyond the two hour limit to allow those members who have indicated to the Chair, before the end of the two hour period, their intention to speak on the motion being debated at that time. The mover of the motion will then have the opportunity to sum up and the vote will take place. This Procedural Standing Order may not be suspended.
- 10.910 In the event a motion has not been discussed at the meeting for which notice has been given, that notice of motion shall then be void.

**Appendix 1c:  
Changes required to introduce referral of motions in relation to executive functions – Option C**

**10. NOTICES OF MOTION**

**10.1 Notice**

Except for motions which can be moved without notice under these Procedural Standing Orders and unless the Chair is of the opinion that the motion should be considered as a matter of urgency, written notice of motions for discussion at full Council meetings must be delivered to the Chief Executive not later than 10 a.m. five clear working days before the date of the meeting. Motions are not considered at the first annual meeting of a new Council. The Chief Executive will maintain a record of all motions submitted and the public may inspect that record except in respect of motions considered in the absence of the press and public.

**10.2 Motion set out in the agenda for a meeting**

10.2.1 Motions for which proper notice has been given under this Procedural Standing Order will be listed on the agenda in the order in which they are received;

10.2.2 Unless the Chair, in consultation with Group Leaders, decides otherwise, subject to Procedural Standing Order 10.8, there will be no time restrictions on motions from each political group (for the purposes of this Procedural Standing Order 10.2.2 only, all independent Councillors are considered as a political group);

10.2.3 If the Chief Executive considers that such a motion qualifies to be considered by the full Council in the absence of the press and public, the Chief Executive may decide appropriate agenda wording to avoid public disclosure of confidential or exempt information.

**10.3 Scope**

Motions must be about matters which are related to the responsibilities of the Council or which affect the County. The Chair's decision on whether or not a motion is relevant to the responsibilities of Council will be final.

~~10.4 Subject to Procedural Standing Order 10.9, unless the Chair, in consultation with Group Leaders, decides otherwise a motion that has been properly notified and which has been moved and seconded will be discussed by full Council at the meeting for which notice has been given (excluding the first annual meeting of a new Council).~~

- ~~10.5~~ If the motion relates to an executive function and whether or not it is discussed at full Council at that time, full Council may:
- ~~10.5.1~~ Refer the motion to Cabinet who will consider the matter in the light of any views expressed by the full Council and advise the full Council of its decision; or
  - ~~10.5.2~~ Refer the motion to the relevant Scrutiny Committee who will consider the matter in the light of any views expressed by the full Council. Following consideration, the Scrutiny Committee will refer the motion to Cabinet, Leader of the Council or Cabinet Member who will consider the matter in the light of any views expressed by full Council and the Scrutiny Committee and advise the full Council of its or their decision.
- 10.64 If a motion is in relation to the exercise of an executive function, and it has been moved and seconded, it may be discussed by the Council if Council so wishes but ordinarily only the mover, seconder, and Group Leaders or their nominees will speak to it, and the motion will in any event stand referred to the Cabinet for consideration and decision. The Cabinet will consider the motion in the light of the Council's views (if any) and advise the Council of its decision in a subsequent report.
- 10.5 If a motion is in relation to the exercise of a non-executive function that the Council has delegated to another Council Body and it has been moved and seconded, the Council may decide that the motion be considered at that meeting, debated and voted upon. Otherwise, the motion will stand referred to that Council Body which after consideration of it will report to the next available meeting of Council incorporating any advice as to how the Council should determine the motion.
- 10.6 If a motion is referred by full Council to the Cabinet or another Council body (~~or both under Procedural Standing Order 10.5.2~~) the proposer and seconder of the motion may attend the meeting of the Cabinet or other Council body (or both) and speak to the motion but may not vote unless a Member of the Cabinet or other Council body.
- ~~10.7~~ ~~If a motion is referred by full Council to the Leader of the Council or Cabinet Member (either directly or via a Scrutiny Committee under Procedural Standing Order 10.5.2) the proposer and seconder of the motion may attend the meeting of the Scrutiny meeting and speak to the motion but not vote (unless a Member of the Scrutiny meeting) and/or submit in writing to the Leader of the Council or Cabinet Member, their views on the motion.~~
- 10.87 The total period of time spent on motions on the day of a meeting shall not exceed two hours. However, debate on motions may be extended beyond

the two hour limit to allow those members who have indicated to the Chair, before the end of the two hour period, their intention to speak on the motion being debated at that time. The mover of the motion will then have the opportunity to sum up and the vote will take place. This Procedural Standing Order may not be suspended.

- 10.89 In the event a motion has not been discussed at the meeting for which notice has been given, that notice of motion shall then be void.

## **11. MOTIONS WITHOUT NOTICE**

11.1 The following motions may be moved without notice:

- 11.1.1 To appoint a Chair of the meeting;
- 11.1.2 Concerning the accuracy of the minutes;
- 11.1.3 To change the order of business in the agenda;
- 11.1.4 To appoint a Council body or Member to a Council body arising from an item on the agenda for the meeting;
- 11.1.5 To receive or adopt reports and recommendations of the Cabinet, Leader of the Council, Cabinet Member, a Scrutiny Committee, or, as appropriate, any other Council body or from Officers and any decision following from them;
- 11.1.6 To amend or withdraw a motion but a Member who has already spoken on a motion being debated may not, during that debate, move or second a motion to this effect;
- 11.1.7 To adjourn the meeting but a Member who has already spoken on a motion being debated may not, during that debate, move or second a motion to this effect;
- 11.1.8 To adjourn the debate but a Member who has already spoken on a motion being debated may not, during that debate, move or second a motion to this effect;
- 11.1.9 To proceed to the next business but a Member who has already spoken on a motion being debated may not, during that debate, move or second a motion to this effect;
- 11.1.10 That the question be put but a Member who has already spoken on a motion being debated may not, during that debate, move or second a motion to this effect;

- 11.1.11 By the Chair not to allow another contribution to the debate from a Member named or to exclude a Member from the meeting under the Procedural Standing Order relating to Members' conduct;
  - 11.1.12 To exclude the public and media in accordance with the Access to Information Procedure Rules;
  - 11.1.13 ~~That the subject of debate be referred to the Cabinet or appropriate Council body;~~ That a motion be debated at Council in pursuance of Procedural Standing Order 10.4 or 10.5.
  - 11.1.14 To extend the time limit for speeches;
  - 11.1.15 That a Member be invited to remain at the meeting under the Procedural Standing Order relating to Members' interests;
  - 11.1.16 To suspend a Procedural Standing Order except Procedural Standing Order 10.8;
  - 11.1.17 To give the consent of the Council where such consent is required.
- 11.2 Standing Order 12 shall not apply to motions moved under this Procedural Standing Order, which shall be proposed, seconded and voted upon without debate, save that:
- 11.2.1 The proposer of a motion may speak for up to three minutes to explain why they have moved their motion;
  - 11.2.2 If a motion is moved under this Procedural Standing Order during a debate, the Chair may consent to one other Member speaking for up to three minutes against the motion moved under this Procedural Standing Order.