

Wiltshire Council

Full Council

29 July 2014

Review of Part 3 of The Constitution – Responsibility For Functions

Purpose

1. The purpose of this report is to ask Council to consider proposed changes to Part 3 of the Constitution, as shown at Appendix 1, including the transfer of the Police and Crime Panel Procedure Rules and Panel Arrangements from Part 3 to a new Protocol, as shown at Appendix 2, following the approval of the Standards Committee on 9 July 2014, with the minutes extract of Standards shown at Appendix 3.

Background

2. Part 3 of the Constitution deals with Responsibility for Functions. This includes setting out the functions of Council, Committees and Cabinet, as well as the Delegation of Executive Functions, Scheme of Delegation to Officers and Scheme of Sub-Delegation.
3. The majority of the changes which have been made are intended to make this Part clearer and easier to follow.
4. Some updates have been required to take account of the following new legislation:
 - a. Local Authorities (Executive Arrangements)(Meetings and Access to Information) (England) Regulations 2012
 - b. Police Reform and Social Responsibility Act 2011
 - c. Health and Social Care Act 2012
5. The other changes which have been made are summarised in paragraph 7 below. These changes do not make any material changes to existing powers but seek to ensure that the powers that are granted under the constitution are exercised properly.
6. The Constitution Focus Group has considered the proposed amendments and further changes were made as a result.

Main Issues for Consideration

7. The changes which have been made to Part 3 are shown in tracked changes.
 - a. A new contents section has been added for ease of use and to ensure that Part 3 can be more easily navigated.
 - b. A new definitions section has also been added for ease of reference.

c. **Part 3 Section A:**

This section contains a core set of principles which identify the key points which should be considered when applying Part 3. Some of these principles have been moved from other sections of the existing Part 3, some have been added to ensure clarity and some are as a result of changes to the legislation as set out in Paragraph 4 of this report.

d. **Part 3 Section B:**

The section has been updated to take account of new legislation and remove reference to repealed legislation.

Some ambiguity was identified in Part 3A, as previously drafted, regarding the responsibilities of the Strategic Planning Committee and Area Planning Committees. This has been dealt with by redrafting parts of paragraphs 2.1 and 2.2.

Paragraph 2.3 has been updated to reflect changes in respect of Licensing.

Part of paragraph 2.5 has been amended to reflect the decision of Full Council at the meeting on 12 November 2013 regarding political balance in respect of sub-committees.

Paragraph 2.7 has been updated to reflect changes made by the Pension Committee.

Responsibility for agreeing the council tax base and controlling capital expenditure has been removed from paragraph 1.3 (Full Council) and re-inserted into paragraph 3 (Cabinet) after consultation with the Associate Director Finance.

Paragraphs 4.7 and 4.8 have been amended to clarify membership arrangements and distinguish between voting members and other participants>

Paragraph 4.9 has been updated to clarify the procedure for appointing a chairman and vice chairman of an Area Board in a unitary election year.

Paragraphs 5 and 6, which relate to the Police and Crime Panel and Health and Wellbeing Board have been inserted. The Police and Crime Panel Procedure Rules and Panel Arrangements have been removed from this section and put into a separate protocol.

e. **Part 3 Section C:**

Appendix 2 has been updated.

f. **Part 3 Section D:**

A new contents and introduction have been inserted for ease of use.

g. **Part 3 Section D1:**

The previous Part 3B Schedule 1, which listed Directors' Areas of Responsibility, has been deleted. This will now be included as part of a separate register, which is required under statute.

This section has also been updated to reflect the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

h. Part 3 Section D2:

This Section has been separated from the previous section to distinguish between the Scheme of Delegation to Directors and the Scheme of Sub-Delegation to Officers in their areas of responsibility. This clarification should make it easier to ensure that decisions are properly authorised and the risk of a successful challenge is avoided. We have included reference to the register, which the council is required to maintain under the Local Government Act 1992 and make available to members of the public.

i. Part 3 Section D3:

An additional provision has been added to paragraph 1 to clarify that the Associate Director Economic Development and Planning Services is responsible for determining whether an application falls within the remit of Strategic Planning Committee or the relevant area planning committee.

8. There was discussion at the Constitution Focus Group Meeting on 15 April 2014 about how members would be made aware when an officer delegated decision had been made in order to allow them to scrutinise the decision. The provisions of the Constitution which allow members to scrutinise decisions are summarised below:
- a. A decision made by Cabinet, an individual member of Cabinet, a committee of Cabinet or a key decision made by an officer with delegated authority from Cabinet can be called-in to be scrutinised by the Overview and Scrutiny Management Committee (Part 1 Paragraph 12, Part 2 Article 6, Part 8 Paragraph 33, Protocol 5).
 - b. In relation to decisions made by officers, which are not key decisions, any member of the Council may request that decisions taken by officers under delegated powers are scrutinised by the appropriate overview and scrutiny committee (Part 3 Section D1 Paragraph 1.8).

There is not a formal call-in procedure for officer decisions which are not key decisions therefore there are no time limits for scrutinising decisions. There are controls in place under the Scheme of Delegation to Officer to ensure officers consider the following when making a decision:

- a. Obtaining the views of relevant members in accordance with set criteria;
 - b. Implication of any Council policy, initiative, strategy or procedure;
 - c. Consultation;
 - d. Other options;
 - e. Staffing, financial and legal implications;
 - f. Risk assessment;
 - g. Involvement of statutory officers and/or Directors;
 - h. Regional or national guidance and legislation; and
 - i. The Constitution.
9. It is proposed that officer decision reports required under Part 3 will be published on the intranet in similar way to Cabinet member delegated decisions.

Recommendations

10. Council is asked to:

Approve the proposed changes to Part 3 of the Constitution, including the transfer of the Police and Crime Panel Arrangements to a new Protocol.

Ian Gibbons, Associate Director, Legal and Governance, and Monitoring Officer

Appendix 1 - Tracked changes to Part 3

Appendix 2 - Police and Crime Panel Protocol

Appendix 3 - Minute Extract of Standards Committee 9 July