

Body: Council

Date: 20 April 2011

Subject: Executive arrangements – Constitution update

Report of: Local Democracy Manager

Purpose: To advise the Council on proposed amendments to the Constitution arising from the new executive arrangements to be implemented on 8 May 2011.

To seek approval to the proposed changes and to a number of minor amendments to reflect organisational and procedural changes.

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Recommendation:

The Council is recommended to approve the proposed amendments to the constitution as set out in appendix 1 to the report.

1.0 Introduction

- 1.1 The constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that the Council is efficient, transparent, and accountable to the people it serves. The Council's current constitution was originally adopted in May 2002 and has been the subject of update and amendment since that time.
- 1.2 This report sets out the final stage of the process for the Council to adopt revised "executive arrangements" in line with recently introduced legal obligations. A report to full Council at its meeting on 24 February 2010 set

out the consultation process and at its meeting on 21 July 2010 the Council considered and adopted proposals for the adoption of the new "strong leader and cabinet" form of executive.

1.3 In order to bring these arrangements into effect, Council at its meeting on 15 September 2010 passed a resolution formally to adopt the new proposals. Following the making of the resolution, public notice was given setting out the main features of the new arrangements and the date they will be implemented.

1.4 Amendments are required to the Constitution following the adoption of the revised executive arrangements and a number of other amendments to reflect organisational and other procedural changes are also proposed.

2.0 Revised executive arrangements

2.1 The main revisions to the Constitution are required to reflect the revised executive arrangements adopted by the Council and which will come into effect on 8 May 2011.

2.2 The changes set out in appendix 1 provide for the following arrangements:

- The leader to be elected by the full Council for a 4 year term commencing at the Annual meeting following the ordinary election of councillors.
- Provide for the leader to discharge all of the authority's executive functions unless or until they are allocated for discharge by him/her to individual cabinet members, a committee of the cabinet or to officers, or, in certain circumstances, outside bodies.
- The leader to appoint one of the Cabinet as deputy leader and for the deputy leader's term of office to match that of the leader save that the leader can end the appointment at any time and appoint a new deputy Leader.
- Provide for the deputy leader to exercise all the powers of the leader in the absence of the leader.
- At the Annual Meeting of the Council the leader to present details of any delegations to officers made by him/her for inclusion in the Council's scheme of delegation to officers, the Councillors appointed to the Cabinet and the individual portfolios allocated to them by the leader. The leader will also provide details of the extent of any authority to exercise executive functions allocated to Cabinet members as a committee, to Cabinet members individually and details of any limitation on their authority.
- Provide for the mechanism as regards any individual member decision making.

2.3 The most extensive changes are required to Article 7 The Executive (Cabinet), the Cabinet Procedure Rules and Access to Information Procedure Rules. Other Articles and Procedures will need minor amendments to take account of the new arrangements.

- 2.4 Revisions have been made to the Cabinet and Access to Information Procedure rules relating to the exercise of executive functions should the leader choose to give individual cabinet members decision making powers. From May 2011 such references will need to be read in the context of the details regarding the arrangements for the discharge of executive functions provided by the leader, referred to in 2.2 above, which are in force at the time.
- 2.5 A new section will be added to Section C – Responsibility for Functions which will set out the leader’s arrangements for the discharge of executive functions. The terms of the scheme to be agreed by the leader elected at the Annual Council meeting will be incorporated into the Constitution when it has been drawn up and notified to the Head of Strategy and Democracy.
- The scheme may be amended at any time by the leader however any changes will be required to be reported to full Council for information.
- 2.6 The Cabinet’s responsibility for executive functions and the roles, duties and responsibilities of Cabinet Members including details of assigned portfolios will become Sections C2 and C3 respectively. The terms of reference for Cabinet remain unchanged. Section C3 will be subject to a review following the Annual meeting when appointments to the Cabinet and individual portfolios have been allocated by the leader.

3.0 Post election changes

- 3.1 Following an election, interim arrangements shall be put in place to cover the post election period until the Annual Meeting to take account of the new legislation which provides that even if the Leader is not re-elected he/she will remain in office until the day of the Annual Meeting.
- 3.2 A protocol will be included in the Cabinet Procedure rules so that in the event of a change in political control, liaison will take place with the Chief Executive in consultation with other group leader(s) before any decisions are taken in this post election period running up to the Annual Meeting. The protocol will also set out guidance for officers exercising delegated authority in this period.
- 3.3 For 2011, the new arrangements will operate from 8 May 2011 and until the Annual Meeting on 25 May 2011 when the leader is elected, the current Leader (or the Deputy Leader if acting in the absence of the Leader) will continue in office and will exercise full executive powers under the new arrangements in this period.
- 3.4 In the event that the Leader at this time no longer commands the support of a majority of the members of the council, the Leader (or the deputy leader if acting in the absence of the leader) and cabinet (if appointed) shall only exercise their powers with the agreement of the Chief Executive who will consult with the leader of the majority group or other group leaders as

appropriate.

4.0 Scheme of Delegation to Officers and Proper Officer List

4.1 To accompany the other changes to the Constitution proposed in this report the opportunity will be taken to update and make comprehensive the Council's Scheme of Delegations to Officers and Proper Officer List. The current delegation scheme has been subject to numerous additions and amendments over the years and following the adoption of the new executive arrangements changes are required to separately identify executive and non-executive delegations and to reflect the changes to the Council's senior management structure.

4.2 A draft document has been prepared and this will be subject to consultation with lead councilors and officers. It is anticipated that the revised delegation scheme will be submitted to Council for formal adoption at its July meeting.

5.0 Other amendments

5.1 Recent changes which have now been incorporated into the constitution (all either the result of Council decisions or following legislative changes) include amendments to the Planning Committee terms of reference to enable the Council to deal with planning applications for and on behalf of the South Downs National Park Authority as from 1 April 2011 and to incorporate the Council's adopted Petitions Scheme.

5.2 In the course of carrying out the required updates a number of relatively minor amendments have been identified and are set out in appendix 1 to the report. These changes are required to reflect current procedures, organisational changes and where it has been identified that a section has information which is covered elsewhere in the constitution.

6.0 Consultations undertaken

6.1 The Legal Section of the Council has been consulted on the proposed revisions.

7.1 Legal implications/risk assessment

7.0 These were detailed in the report to Council on 24 February 2010.

8.1 Policy and performance implications

8.0 These were detailed in the report to Council on 24 February 2010.

9.0 Financial and resourcing implications

9.1 There are no financial implications arising from this report.

10.0 Conclusion

- 10.1 Changes are required to the Constitution to incorporate the new executive arrangements, to reflect changes to the organisational structure and to procedures.
- 10.2 The changes arising from the revised executive arrangements will come into effect from 8 May 2011.

David Robinson
Local Democracy Manager

Background papers:

1. Local Government and Public Involvement in Health Act 2007
http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070028_en.pdf
2. Local Government Act 2000
http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000022_en_1
3. Report to Council on 24 February 2010
<http://www.eastbourne.gov.uk/council/meetings/council/?assetdet=84571&category=8219>
4. Report to Cabinet 14 July 2010
<http://www.eastbourne.gov.uk/council/meetings/cabinet/?assetdet=92588&category=8305&p=2>
5. Report to Council 21 July 2010
<http://www.eastbourne.gov.uk/council/meetings/council/?category=8318>

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Eastbourne Borough Council Constitution

Schedule of recommended changes:

Executive Arrangements – Amendments			
<p>Amendments are required to various Articles to reflect the fact that Executive powers are held by the Leader unless or until they are delegated to Cabinet Member(s) individually or in committees, to individual officers or in some circumstances to outside bodies. The most extensive changes to Part 2 are to Article 7. Other Articles (Article 9 – Overview and Scrutiny/ Article 11 Joint Arrangements and Article 13 Decision Making) will need lesser amendment to take account of the new arrangements.</p>			
Part:	Document:	Proposed change:	
Part 2, Article 7	Articles: The Executive (Cabinet)	Para 7.02 (Form & composition) Amended to "The Executive will consist of the Leader together with at least 2, but no more than 9 Councillors appointed to the Cabinet by the Leader"	
		Para 7.03 (Leader) Amended to "The Leader will be a Councillor elected to the position of Leader by the Council (normally at the Annual Meeting of the Council following the ordinary election of Councillors). The Leader will hold office for a 4 year term or until"	
		Para 7.06 (Deputy Leader) The Leader shall appoint one of the members of the Cabinet to be the Council's Deputy Leader who shall hold office until the end of the Leader's term of office. The rules relating to the retirement, resignation or removal from office of the Deputy Leader shall be the same as those for other Cabinet Members set out below.	

		<p>If a vacancy occurs in the position of Deputy Leader, the Leader shall appoint another Deputy Leader.</p> <p>The Deputy Leader shall be able to exercise all the functions of the Leader when the Leader is absent. The Deputy Leader may represent the Leader at meetings, discussions and briefings unless another member of the Cabinet has been nominated by the Leader to attend.</p> <p>If for any reason the Leader and Deputy Leader are both unable to act or their offices are vacant, then the Cabinet must act in the Leader's place or arrange for a Member of the Cabinet to do so.</p>	
		<p>Para 7.07 (Responsibility for Functions) Amended to "The Leader will maintain a list in Part 3 of this Constitution setting out which individual Cabinet Members, committees of the Cabinet, officers or bodies acting under joint arrangements are responsible for the exercise of particular executive functions".</p>	
Part 3 Responsibility for Functions	New Section C1	Will set out broadly the Leader's allocation of executive functions.	
	Section C2	Will set out the terms of reference of the Cabinet, which are unchanged.	
	Section C3	Will detail the functions of Cabinet Members and areas of responsibility (The current section F - Cabinet Members - to be deleted).	
Part 4 Procedure Rules	Section D, Cabinet Procedure Rules	<p>Post Election Changes</p> <p>Following an election, interim arrangements shall be put in place to cover the post election period until the Annual Meeting to take account of the new legislation</p>	

		<p>which provides that even if the Leader is not re-elected he/she will remain in office until the day of the Annual Meeting.</p> <p>A protocol will be included in the Cabinet Procedure rules so that in the event of a change in political control liaison will take place with other group leader(s) before any decisions are taken in this post election period running up to the Annual Meeting.</p> <p>The protocol will also set out guidance for officers exercising delegated authority in this period.</p>	
		<p>Para. 1.1 (The operation of the Cabinet) Amended to:</p> <p>The arrangements for the discharge of executive functions are set out and explained in Part 3 of the Constitution. The arrangements provide for the Leader to discharge all of the authority's executive functions or make arrangements for their discharge by the cabinet, a member of the cabinet, a committee of the cabinet, an officer, a body acting under joint arrangements or another local authority.</p>	
		<p>New para 1.2 (Delegation by the Leader)</p> <p>At the Annual Meeting of the Council the Leader will present details of any allocation of executive functions and delegations made by him/her to officers for inclusion in or annexation to the Council's scheme of delegation to officers and detail:</p> <p>The Councillors appointed to the Cabinet and the individual portfolios allocated by the Leader. The extent of any authority delegated to Cabinet members individually including details of the limitation on their</p>	

		<p>authority.</p> <p>The terms of reference and constitution of such Cabinet Committees as the Leader appoints and the names of Cabinet Members appointed to them.</p> <p>The nature and extent of any delegation arrangements to any bodies acting under joint arrangements and the names of those Cabinet members appointed to any joint committee for the coming year.</p> <p>The nature and extent of any delegation to officers with details of any limitation on that delegation.</p>	
		<p>New para 1.3 (Sub-delegation of Executive functions)</p> <p>Where the Cabinet, a Committee of the Cabinet or an individual member of the Cabinet is responsible for an executive function, they may delegate further to a body acting under a joint arrangement or an officer.</p> <p>Where executive functions have been delegated, that does not prevent the discharge of the delegated functions by the person or body who made the delegation.</p>	
		<p>New para 1.4 (The Council's Scheme of Delegation to Officers and Details of Allocation of Executive Functions)</p> <p>(a) Subject to (b) below, the Council's scheme of delegation to officers will be subject to adoption and/or amendment by the Council.</p> <p>(b) The Leader may amend the arrangements relating to the allocation of executive functions and if appropriate the scheme of delegations to officers at</p>	

		<p>any time during the year having giving written notice to the Head of Strategy and Democracy and to the person, body or committee concerned. The Head of Strategy and Democracy will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.</p>	
		<p>New para 1.5 (Conflicts of interest)</p> <p>(a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of the Constitution.</p> <p>(b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of the Constitution.</p> <p>(c) If the exercise of an executive function has been delegated to a Committee of the Cabinet, an individual member or an officer, and a conflict of interest arises, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.</p>	
		<p>Para 2.3 (Cabinet Meetings) Amended to:</p> <p>Executive decisions which have been delegated to the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of this Constitution.</p> <p>Where executive decisions are delegated to a committee of the Cabinet, or a Cabinet member, the rules applying to Cabinet decisions taken by them shall</p>	

		be the same as those applying to those taken by Cabinet as a whole.	
		Para 4.3 Delete reference to cabinet preparation process schedule being appended to the rules.	Detailed schedule available via Insite.
Part 4 Procedure Rules	Section B Access to Information	Section 1 (Scope) Add that rules apply to individual cabinet member meetings.	
		For the following sections - After references to Cabinet add as appropriate "its committees and/or individual Cabinet Members or individual Cabinet member meetings" Section 12 (Application of Rules to Cabinet) Section 13 (Procedure before taking key decisions) Section 14.2 (Contents of the forward plan) Section 17 (Report to Council) Section 18 (Record of Decisions) Section 19 (Executive meetings relating to matters which are not key decisions)	
		Add new Section 22 as follows:-	
		22 Decisions by Individual Members of the Cabinet	
		22.1 Reports intended to be taken into account Where an individual member of the Cabinet receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least five clear days after receipt of that report.	
		22.2 Provision of copies of reports to the Scrutiny Committee	

		<p>On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chairman of the Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.</p> <p>22.3 Record of Individual Decision</p> <p>As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the Head of Strategy and Democracy to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8, concerning access to minutes and papers after a meeting, will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information.</p>	
		Renumber subsequent sections	
		<p>Section 23 (Scrutiny Access to Documents)</p> <p>Para 23.1 add "any decision taken by an individual member of the Cabinet".</p>	
		<p>Section 24 (Additional rights of access for Councillors)</p> <p>Para 24.1 (a) amend exempt information categories</p>	To reflect changes to exempt information categories
Part 4 Procedure Rules	Budget & Policy Framework	For the following sections - After references to Cabinet add "committees of the Cabinet, an individual Member of the Cabinet"	

		<p>Para 3 (Decision outside the budget or policy framework)</p> <p>Para 4 (Urgent decisions outside the budget or policy framework)</p> <p>Para 5 (Virement)</p> <p>Para 6 (In-year changes to policy framework)</p> <p>Change references to "Cabinet" functions to "executive" functions</p>	
Other proposed minor changes			
Part 4 Procedure Rules	Section A Council Procedure Rules	Para 13.1 (Notice of motions) Delete reference to motions being entered into a book open to public inspection.	Electronically available.
	Section F Rules for other Council Bodies	Delete section	References covering the same or related issues are set out in other sections of the constitution.