

## **ITEM 16 Amended Officer Scheme of Delegations and Article 12 of the Constitution**

Report of the Corporate Portfolio Holder

### **Recommended:**

- 1. That the Officer Scheme of Delegations is amended as shown at Annex 1 to the report.**
- 2. The Article 12 of the Constitution is amended as shown at Annex 2 to the report.**
- 3. That the Head of Legal and Democratic Services be authorised to make such amendments as duly approved and in consultation with the Corporate Portfolio Holder, all such necessary consequential administrative amendments which follow together with corrections of all typographical and minor errors appearing in the Constitution.**

### **Recommended to Council**

#### **SUMMARY:**

- The Head of Legal and Democratic Services is undertaking a review of the Constitution.
- This report seeks approval for those changes which are required now in order that the Constitution reflects accurately operational changes within the organisation, established practice, and current law.
- Whilst largely administrative in nature, and in part within the delegated authority of the Monitoring Officer, Officers seek the approval of Cabinet and Council to ensure organisational probity and transparency.

### **1 Introduction**

- 1.1 From time to time it is good practice to undertake a review of the Constitution and particularly to make those amendments which are required either by virtue of resolutions of Council or changes in law, as well as to ensure that the document reflects clearly the established practices of the Council and to correct more minor errors.
- 1.2 In the course of their review of the Constitution, Officers have ensured that the Constitution adequately reflects the terms of those resolutions of Cabinet and Council.

- 1.3 In addition Officers have also updated the Constitution with changes to the organisational structure. For example, deleting posts which do not now exist and transferring delegations from the former Head of Administration to the Head of Legal and Democratic Services. Officers have also made changes to the vocabulary which has followed legislative change. For example, Cabinet Forward Plan has become the Cabinet Work Programme.
- 1.4 Officers have corrected obvious typographical errors in spelling and grammar.
- 1.5 This report seeks the approval of additional amendments to the Officers' Scheme of Delegations and Article 12 (Annex 1, 2 and 3), which, whilst of a similar administrative nature and arguably within the delegated authority of the Monitoring Officer, would benefit from the authority of Council and the inherent transparency of the committee process.

## 2 **Background**

- 2.1 The Council's Scheme of Delegation to Officers comprises part of the Constitution. The Scheme is reported to Annual Council as a formality. Any material changes are made by the authority of Council at ordinary meetings following consideration of such proposed changes by Cabinet.
- 2.2 Article 12 of the Constitution sets out the management structure and, more broadly, the allied responsibilities. Article 12 addresses particularly the functions of specific statutory officers, namely the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer.
- 2.3 Article 12 and the Scheme of Delegations overlap in their content and so should be consistent although Article 12 is to be read as an outline for which the Scheme of Delegations provides much of the detail.
- 2.4 Annex 1 is the draft Scheme of Delegations which shows the proposed changes in red.
- 2.5 Annex 2 is the draft Article 12 which again shows proposed changes in red. Members will note that Annex 2 does not include the text relating to the statutory officers because the responsibilities listed for each of those three statutory officers remain unchanged.
- 2.6 Annex 3 relates to the Scheme of Delegations. The Annex brings together all the proposed changes to the Scheme and explains in brief the reasons for each proposal. Members will see that those reasons vary. From the expiry of a commercial relationship with New Forest District Council, to matters of accuracy regarding the services provided by the Council for funerals, to changes in legislation which have removed powers of investigation relating to benefit fraud.
- 2.7 The majority of the proposed changes do not extend the scope of any current delegations on which officers rely in carrying out their work. For the most part the proposed amendments seek clarity and accuracy, ensuring that the words of the Constitution align with current practice as required by law.

- 2.8 The proposed changes which intend an extension in the scope of a particular delegation are limited to those recommended by the internal auditors which again seek to bring clarity and to allow for some flexibility in the application of those delegations for the purposes of more effective administration. For example, the current delegation to the Head of Estates regarding the service of a notice to quit is limited to stallholders at Andover Market. The proposed amendment would allow for notice to be served on any stallholder at a market which was administered by Test Valley Borough Council.
- 2.9 Finally, Members might note that these proposals follow consultation with all Heads of Service. That consultation has so far been limited to bringing the Constitution into line with resolutions of Council, recent changes in law and making necessary corrections to errors in presentation. Where more significant change is sought to manage both changes in law and changes in the landscape of local government, such as the need to secure a revenue stream independent of central government or devolution, specific reports will be produced for Members' consideration as is the practice of this Council.
- 2.10 In light of the administrative nature of the changes proposed and the intention to proceed to consider what further changes to the Constitution might be required, it is not proposed to automatically issue each Member with a new hard copy Constitution, rather to provide a hardcopy on request. The updated version duly approved by Council will be available on the Council's website.

### **3 Corporate Objectives and Priorities**

- 3.1 In order to deliver the key priorities identified in the Corporate Plan it is essential that Officers might rely upon a clear and lawful Scheme of Delegations.
- 3.2 Maintaining and improving the Constitution to reflect current legislation and the broader agenda of local government is essential in order to deliver effective and lawful decisions in the day to day implementation of the Corporate Plan.

### **4 Consultations/Communications**

- 4.1 The Heads of Service were consulted on the proposed changes to the Scheme of Delegations.

### **5 Option Appraisal**

- 5.1 Failure to update the Scheme of Delegations to reflect changes in legislation or to ensure clarity in the authority and execution of decision-making could mean that the Council may be subject to legal challenge or that any legal action taken under these regulations would be invalid.

### **6 Risk Management**

- 6.1 A risk assessment has been completed in accordance with the Council's Risk management process and the existing risk controls in place mean that no significant risks (Red or Amber) have been identified, save for the potential of legal challenge.

## **7 Resource Implications**

- 7.1 None save the time of officers in undertaking the necessary changes to the Constitution.

## **8 Legal Implications**

- 8.1 The proposed Scheme of Delegations will ensure that the powers delegated to Officers are clearly and accurately stated. Such clarity and accuracy will ensure that delegated powers are always operated lawfully.

## **9 Equality Issues**

- 9.1 An Equality Impact Assessment of the matters in this report indicate that no potential for unlawful discrimination and/or low level or minor negative impact have been identified, therefore a full EQIA has not been carried out.

## **10 Other Issues**

- 10.1 Community Safety – None
- 10.2 Environmental Health Issues – None
- 10.3 Sustainability and Addressing a Changing Climate – None
- 10.4 Property Issues – None
- 10.5 Wards/Communities Affected – None specifically

## **11 Conclusion and reasons for recommendation**

- 11.1 This report seeks approval for those changes which are required now in order that the Constitution reflects accurately operational changes within the organisation, established practice and current law.
- 11.2 Whilst largely administrative in nature, and in part within the delegated authority of the Monitoring Officer, Officers seek the approval of Cabinet and Council to ensure organisational probity and transparency.
- 11.3 Members will be aware that the delegation of powers is essential to the work of the Council and its officers, and for that reason it is important that such powers are both lawful and effective. The proposed changes to the Constitution canvassed in this report and annexes ensure that the Council maintains an effective and lawful Scheme of Delegations.

Background Papers (Local Government Act 1972 Section 100D)

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:

3

File Ref:

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Report to:

Cabinet

Date:

22 June 2016