

## CONSTITUTIONAL REVIEW COMMITTEE

Minutes of the meeting held on 28 May 2024 at 7.00 pm in Council Chamber, Cecil Street, Margate, Kent.

**Present:** Mr Peter Tucker (Chair); Councillors Austin, Britcher, Everitt, W Scobie, Crittenden, Currie, Edwards and Garner

**In Attendance:** Mr Peter Lorenzo (Independent Member) and Mr Michael Clarke (Independent Member)

### 1. APOLOGIES FOR ABSENCE

Apologies were given by Councillor Fellows, Councillor Pugh, Councillor Scott and Independent Member, Ms Carolyn Ruston.

### 2. DECLARATIONS OF INTEREST

There were no declarations of interest.

### 3. MINUTES OF PREVIOUS MEETING

Councillors wanted to make note that in the previous minutes of the meeting held on 27 February 2024, under Item 5. Councillor / Officer Protocol, that there was discussion regarding the culture that was inherited from previous administrations and how Councillors now are attempting to move away from that, specifically addressing the imbalance between officers and Councillors in regards to the support provided to Councillors.

The Chair proposed, Councillor Scobie seconded and Councillors agreed that with the acknowledgement of comments made by Councillors, that the minutes of the meeting held on 27 February 2024 were a correct record.

### 4. SPECIAL URGENCY PROVISIONS

Ingrid Brown, Head of Legal and Democracy & Monitoring Officer, introduced the report and made the following points:

- The report was to address an anomaly in Part 4 of the constitution, for the provision of the taking of urgent decisions and Part 3, under Delegations Scheme, that there was no delegated authority for anyone to take urgent decisions
- The proposed amendment under Part 3, Delegations Scheme, Part A, Section D – 2.2, were as follows:

“With the exception of key decisions that are covered by the special urgency provisions set out under Part 3, B, 22 and in Part 4, all key decisions must be agreed by the Cabinet.”

- The proposed amendment under Part 3, Delegations, Section E, Part B – Part 2, were as follows:

“Delegation to the Chief Executive:

- i. To undertake all action related to the role of the Head of Paid Service;

- ii. To exercise any power whether specified in this Scheme or otherwise delegated to any other officer with the exception of the Monitoring Officer and unless expressly prohibited by law
- iii. In a situation they consider to be an emergency, to undertake all action they consider necessary, including:
  - (a) Incurring expenditure from working balances and/or reserves;
  - (b) To determine whether to take, defend and/or settle any legal proceedings;
  - (c) To make a final determination whether to acquire land and/or dispose of a building and/or land,

subject to consultation with the Section 151 Officer to the extent that they consider it appropriate and feasible and to notifying any emergency action as soon as Page 3 Agenda Item 4 reasonable to the Leader. For the purposes of exercising this power, all restrictions in the Financial Regulations including the contract procedure Rules are deemed waived and any decision may be made regardless of whether it is a Key Decision. In the event of an urgent key decision the procedure rules in Part 4 of this constitution must be followed.”

- The proposed amendment under Paragraph (q) of section 15 (Call-in) of Overview and Scrutiny procedure rules, in Part 4 of the Constitution to were as follows:

“The Chair of the Council must agree both that the decision proposed is reasonable in all of the circumstances and to it being treated as a matter of urgency. In the absence of the Chair, the Vice-Chair’s consent shall be required. In the absence of both, the consent of the Chair of the Overview and Scrutiny shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.”

Councillors made comments and asked questions as follows:

- Councillors asked about the frequency of the use of this part in the Constitution and the steps it would take to use this provision. Officers replied that it had been rarely used in the past and was unlikely to be used more often in the future due to the proposed changes. Regarding the steps to use the provision, the Chief Executive would have to demonstrate urgency in consultation with the Monitoring Officer, Section 151 Officer and other key officers, as well as consulting with the Leader of the Council in order to make the decision to use the provision. Following this, further consultation would be needed with the Chair of Council to satisfy that the need for urgency was justified. The decision would then be taken and reported to Councillors at the next full Council meeting;
- Councillors brought up the alternative options involving consultation with the Leader of the Council. Councillors agreed that in circumstances where the Leader of the Council was unavailable that the Chief Executive Officer, being a non-political figure, provided assurance that choices are not politically motivated.

Following discussion, Councillor Britcher proposed, Councillor Austin seconded and Councillors agreed:

That the proposed amendments be approved.

## **5. RECORDING OF EXECUTIVE AND NON-EXECUTIVE DECISIONS**

Ingrid Brown, introduced the report and made the following points:

- This report had been brought to the Committee in accordance with the Local Authorities Executive Arrangements Regulations 2012 and the meetings and

access to information regulations 2012 which say a decision notice must be published;

- The proposed amendment under Part 2, Article 13 – Decision Making and Types of Decisions (13.03), were as follows:

“(a) Decisions of the Council are either executive or non-executive. Executive decisions relate to all of the council’s functions that are not Full Council (or Non-Executive) functions. They include those Local Choice functions identified in Part 3 of the Constitution as the responsibility of the Executive. Executive decisions are taken by the Leader, Cabinet, Cabinet committees, Cabinet Members or officers under delegated authority in accordance with, and in order to implement, the Budget and Policy Framework.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and subsequent regulations give effect to section 13 of the Local Government Act 2000 by specifying which functions are not to be the responsibility of the Executive; which may (but need not) be the responsibility of the Executive (the “Local Choice functions”); and which are to some extent the responsibility of the Executive. All other functions not so specified are the responsibility of the Executive.

Non-Executive functions are powers and duties that under statute are not the responsibility of the Executive Leader, Cabinet or Cabinet members. The power to exercise Non-Executive functions is either reserved to Full Council or delegated by Full Council to committees or officers. Decisions that are reserved to Full Council and may not be delegated are set out in Article 4.02.”

- Also proposed, would be the following, inserted as paragraph (d) after paragraph (c):

“Executive decisions that are not key decisions:

(d) Non-key executive decisions are decisions that are more than merely administrative. They are major operational decisions and are important enough to be open to public scrutiny. These include the following:

- i. all officer decisions which will result in the Council incurring expenditure, including the loss of income, of between £140 000 and £250 000, with the exception of operational expenditure identified within the agreed Service Plan and Service Budget;
- ii. a decision which has been specifically delegated to Officers – for example to conclude an agreement or contract within the outline terms agreed by the Cabinet; and/or
- iii. a decision which is controversial and/or politically sensitive in nature or is, in the opinion of the Director, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the Council.”

- Also proposed, would be the following under paragraph (e):

“(e) All executive non-key decisions as described above, must also be made in accordance with the requirements of the executive decision Procedure Rules set out in Part 4 of this Constitution at paragraphs 21.0- 22.2.”

Previous to this, the constitution provided for the publication of a decision record in relation to executive key decisions. The Constitution defined what was meant by an executive key decision, however there was no definition of an executive non-key decision. The amendment would provide greater consistency in the application of the regulations and transparency in relation to this type of decision.

Councillors made the following comment:

- Councillors made brief mention of the last sentence preceding point (a) under 6.2 of the report and how it had a few unneeded extra words. Officers made note of this.

Following discussion, Councillor Scobie proposed, Councillor Everitt seconded and Councillors agreed:

That the proposed amendments be approved.

## **6. CONSTITUTIONAL REVIEW COMMITTEE WORK PROGRAMME**

Nick Hughes, Committee Services Manager, introduced the report and made the following points:

- Based on recommendations from the previous Constitutional Review Working Party, the work programme had been suggested with topics laid out under 3.2 of the report;
- Councillors were reminded that topics could be added to the work programme and that the work programme itself was flexible. They were also told that for any items Councillors would like to add to the work programme, they should come to Democratic Services in order to get them added. After that the Committee would decide if they approve of the report, at which point Democratic Services would research the topic to bring it back at a later point;
- This report would be standard for all future Constitutional Review Committee meetings.

Councillors made comments and asked questions as follows:

- Councillors welcomed this work programme, noting the concise and clear way items can be added to future meetings;
- Councillors discussed items that they would like to suggest for future meetings to be added to the work programme, including: Adding; reserve Councillors to the Licensing Board; the possibility of political groups having joint leaders; reviewing the rules around petitions; raising the number of Councillors on the Licensing Sub-Committee from 3 to 5 and speech length overruns;
- Officers clarified the reasoning for items already included on the work programme, highlighting Questions at meetings (Council), the length of time allowed of speeches and the recording of votes. They also touched upon other items on the plan, including the process of how motions are debated, the rules of debate and the annual review report of the Committee that would be considered by Full Council during the Annual meeting

Following discussion, Councillor Scobie proposed, Councillor Austin seconded and Councillors agreed:

That the proposed amendments be approved.

Meeting concluded: 7:34pm