



Demystifying the Constitution

Sarah Sternberg
Assistant Director – Governance & Monitoring Officer

Matthew Kane
Governance Manager

DRAFT

Purpose of Session

We'll cover:

- The new Scheme of Delegation agreed in July (BDC) and October (NEDDC)
- New Regulations regarding delegated decisions
- Recent changes to codes and protocols governing Elected Members
- Standards Survey (NEDDC) revealed a lack of awareness of member/officer protocols

Functions Scheme

Local Authority functions may be:

- Council Functions
- Executive Functions
- Local Choice Functions

Council Functions

Examples of Council functions:

- Planning
- Licensing
- Setting or amending the budget and Council Tax
- Appointment of senior officers
- Staffing
- Approving major policies
- Appointing the Leader

Executive Functions

Examples of Executive functions:

- Property and land management
- Approving tenders over a certain amount
- Sports and recreation
- Customer complaints
- Monitoring the Council's finances
- Approving most plans and strategies

The scrutiny process provides checks and balances on executive decision-making

Delegation

Most of these functions can be delegated to:

- A committee
- A sub-committee
- An officer of the authority
- Another local authority

Delegations may be made by a meeting or by a list agreed by Council known as a 'Delegation Scheme'

Officer Delegation Scheme

- Works on the basis of generic rather than specific delegations
- Gives greater discretion and avoids risks associated with defining powers too narrowly
- **Important to consult with relevant Portfolio Holder/ward member and with S151, MO & HR**
- Powers delegated to officers may still be exercised by the relevant body

Officer Delegation Scheme

- Powers in Scheme delegated as far as AD level
- ADs may authorise another officer to exercise their powers
- Important to keep register of authorisations and send the Governance Manager a copy
- Delegated powers held by a post may be exercised in their absence by their manager

Officer Delegation Scheme

- Executive directors may exercise powers of CEO in his absence
- ADs may exercise powers of Executive Directors in their absence
- The CEO has a general power to transfer powers between posts

General Powers to CEO, EDs & ADs

Examples of officer powers in the Scheme:

- Day-to-day administration & operational matters in their area that are within budget
- Any necessary action to implement policy
- Sign notices and licences and serve statutory notices
- Decide terms on which services will be provided to the public

General Powers to CEO, EDs & ADs

- Employment of staff below AD level including recruitment and selection process
- Re-grading of posts following JE
- Dealing with procurement matters
- Acquire and dispose of land and premises under £50,000
- Commission goods and services within budget

General Powers to CEO, EDs & ADs

- Certain officers (statutory officers) have very particular functions in the Scheme
- There are also 'proper officers' who have responsibility for specific roles within the legislation

DD Forms

Officer decisions should be completed using the standard DD form

Particular onus now to record decisions relating to:

- Award of contracts
- Third party rights
- Material financial expenditure

No DD, no decision. Ultra vires.

DD Forms

- Form must record that consultation has taken place
- Original signed form must be sent to Linda Baston, PA to Director of Transformation
- Copies will be published unless specified as exempt under one of the relevant paragraphs

Functions not Delegated

The following decisions will still need to be taken by members:

- Setting or amending the budget / Council Tax
- Approval of funding for a new post
- Appointments to posts at AD level and above
- Tenders over £50,000
- Approving or updating major new policies
- Deciding contentious planning applications

Key Decision

Any **executive decision** that:

- Potentially involves the Council spending or saving £50k or more; or
- Is likely to have a significant impact on two or more wards

is a **Key Decision** and should normally be taken by Cabinet/Executive.

Exempt Items

Anything that is needed to be considered in private is an **exempt item**.

An item may only be made exempt if it:

1. Relates to an individual
2. Is likely to reveal an individual's identity
3. Relates to a person's financial or business affairs
4. Relates to labour relations consultations/negotiations
5. Involves legal professional privilege
6. Involves notices, orders or directions being given under an enactment
7. Relates to the prevention, investigation or prosecution of crime

28 Days' Notice

The Council must publish a list 28 days before Key Decisions or exempt items are determined

Enables public to see what is being considered and make representations

It is important that Governance are made aware of any such items as soon as possible

There is a separate process to go through if the above cannot be followed – this should be the exception not the rule

Implementation of decisions

Council

Come into force on the day they are made (or, in the case of planning, when the decision notice is issued)

Executive

Scrutiny call-in process – may be implemented five days' after publication of decision

Call in may only be excluded in cases of urgency

Implementation of decisions

The Council may be subject to challenge, court costs and the Ombudsman if:

- Delegation scheme is not followed correctly
- It fails to comply with the legislation with regard to giving proper notice of items

Codes and Protocols

- Members Code of Conduct
- Employee Code of Conduct
- Gifts and Hospitality
- Member/Officer Protocol

Members Code of Conduct

- Overhaul in Summer 2012
- Based on Seven General Principles
- New interests regime
- New criminal sanction
- New Standards Committee

Members Code of Conduct

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

Seven General Principles

- You have a right to complain if you feel that a District or parish councillor has fallen short of the seven principles
- No provision in legislation for suspension or disqualification of councillors
- Instead, a criminal sanction for failure to register and declare interests

Employee Code of Conduct

Relationships with members

- Information that is confidential, exempt or given in confidence should not be disclosed
- Officers serve all councillors and not just one political group
- Officers should not allow personal or political opinions to interfere with their work
- Mutual respect is key to officer and member relationships but close personal familiarity should be avoided

Employee Code of Conduct

Personal interests

- Any relationships with companies that provide services for or on behalf of the Council should be declared to your senior manager
- Officers should not be involved in appointments, disciplinary or pay adjustments for relatives or friends
- Secondary employment should not be undertaken without approval
- Interests that may conflict with the Council's interests must be declared
- Membership of any 'secret' organisations should also be declared

Employee Code of Conduct

Probity

Importance of complying with:

- Equality provisions
- Contract standing orders
- Gifts and hospitality rules

Gifts & Hospitality

Any offers given by a company seeking to do business with the Council should be refused

Only exceptions to this are:

- Small token gifts e.g. trade advertisements
- Small articles given at the end of visits
- Small gifts given without warning where refusal would cause offence

Gifts & Hospitality

- Details of all gifts and hospitality should be reported to the Monitoring Officer or her deputies
- You must provide details of the donor and whether the offer was accepted/refused
- Hospitality is reported on an annual basis to the Standards Committee and an item put in the News (NEDDC only)

Member/Officer Protocol

Overview

- Members and officers indispensable to one another, but roles are distinct
- Officers advise, members decide
- Members make the policy, officers implement it

Member/Officer Protocol

Support to Party Groups

- Officers may be called on to give advice before or at Group meetings
- Such support must be available to all groups
- Officers should only advise on Council (not party) business
- Party group meetings cannot make decisions that bind the Council. Their decisions should not be acted on.

Member/Officer Protocol

Members Access to Information

- Members' rights to information are enshrined in law
- The 'need to know' principle
- No right to a 'roving commission'
- Freedom of Information considerations

Member/Officer Protocol

Officer/Chairperson Relationship

- Should never be so close, or appear to be so close, as to compromise impartiality
- Individual members have limited (if any) decision making powers by themselves

Member/Officer Protocol

Members Access to Data Systems

- Members should not have access to systems which control or process personal data unless it is on a public register
- May view data that allows them to carry out their duties e.g. Disabled facilities grants
- Neither members nor officers have the right to view CCTV



Any Questions?