



# Northumberland

## County Council

### COUNCIL

**24 FEBRUARY 2021**

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#### **UPDATE TO CONSTITUTION – ACCESS TO INFORMATION RULES OF PROCEDURE and OFFICER DELEGATION SCHEME**

**Report of the Service Director, Corporate Assurance**

**Report of Business Chair: Councillor Barry Flux, Business Chair**

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#### **Purpose of report**

This report seeks Council to proposed amendments to the Access to Information Rules of Procedure which sit within Part 5 of the Council's Constitution and to the Officer Delegation Scheme in Part 4 of the Constitution.

#### **Recommendations**

It is recommended that the Council:

- (1) Approves the amended Access to Information Rules of Procedure at Part 5 of the Constitution attached as Appendix A to this report.
- (2) Approves the amended Officers Delegation Scheme at Part 4 of the Constitution and attached as Appendix B to this report.

#### **Key issues**

This report is part of a series of reports to the Council making recommendations to update the Council's Constitution. This report deals with the refresh of the Council's Access to Information Rules of Procedure and the Officer Delegation Scheme.

## **Background**

(1) The Access to Information Rules of Procedure at Part 5 of the Constitution set out the legal requirements placed on the Council in relation to the following issues:

- The public's right to attend Council meetings and to access agendas, minutes, reports and background documents
- How and when the public can be excluded from meetings during the consideration of confidential or exempt information
- Rules around formal meetings of the Cabinet including publicising key decisions in the Forward Plan and the process to be followed where decisions are urgent
- The right of Overview and Scrutiny Committees to request information where they are of the view proper processes for the making of key decisions have not been followed and to obtain Cabinet papers
- Proper recording of executive decisions
- Notice of Cabinet meetings and the right to attend
- Rights of elected members to access Cabinet papers

## **Access to Information Rules of Procedure**

(2) The proposed amendments to the Access to Information Rules of Procedure are attached at Appendix A and briefly provide the following:

<b>Paragraph</b>	<b>Content</b>
1. Scope	<ul style="list-style-type: none"><li>• Deals with those meetings to which the Rules apply and changes the description of Cabinet meetings from "Public" to "Formal".</li><li>• This is intended to avoid any confusion between Cabinet meetings from which the press or public are excluded and informal briefings of Cabinet which are not open to the public as there are not making any formal decisions.</li></ul>
3. Rights to attend meetings	<ul style="list-style-type: none"><li>• States the public may attend all meetings subject only to the exceptions in these Procedure Rules and adds "and in any statutory provisions"</li><li>• Future proofs the document in the event any very specific legislation might affect public attendance</li></ul>

<p>6. Supply of Copies</p>	<ul style="list-style-type: none"> <li>• Sets out the right to have copies of relevant agendas and reports</li> <li>• Adds that the Council will usually supply these in electronic format and adds that documents will be made available to the public by the Council publishing them on its website (but retains the wording which states copies will be made available at the meeting)</li> </ul>
<p>8. Background Papers</p>	<ul style="list-style-type: none"> <li>• Sets out definition of background papers</li> <li>• States that there is no requirement to list confidential or exempt papers as back ground papers and adds “unless the exemption no longer applies”</li> </ul>
<p>9. Summary of Public’s Rights</p>	<ul style="list-style-type: none"> <li>• Provides a written summary of the public’s rights to attend meetings and inspect and copy documents will be kept at County Hall</li> <li>• Adds “and published on the Council’s website”</li> </ul>
<p>10. Exclusion of Access by the public to meetings</p>	<ul style="list-style-type: none"> <li>• Summarises the circumstances in which the public can be excluded from meetings during the consideration of confidential or exempt information</li> <li>• Alters the reference to the Human Rights Act from “section “ to “article” and briefly outlines the reasons why a private hearing would be justified under that Act</li> <li>• Adds a new section referring to hearings under the Licensing act 2003 – which should be open to the public</li> <li>• Adds a new heading “Public Interest Test”</li> </ul>
<p>12. Application of the rules to the Cabinet</p>	<ul style="list-style-type: none"> <li>• Sets out which Rules apply to meetings of the Cabinet and refers to making key decisions</li> <li>• Updates cross references in the</li> </ul>

	<p>document</p> <ul style="list-style-type: none"> <li>• Inserts the full definition of a key decision from Article 13</li> </ul>
15. Procedure before taking key decisions	<ul style="list-style-type: none"> <li>• Summarises the required steps to be taken where the Cabinet intends to make a key decision including publication in the Forward Plan at least 28 clear days before the meeting</li> <li>• Inserts additional wording for clarity at 15 (1) “notice of the intention to make a key decision..”</li> </ul>
16. Forward Plan	<ul style="list-style-type: none"> <li>• Outlines the required contents of the Forward Plan</li> <li>• Notes Confidential or exempt information need not be included in the Forward Plan</li> </ul>
18. Special Urgency	<ul style="list-style-type: none"> <li>• Outlines the process to be followed where a matter has not been included in the Forward Plan but is urgent</li> <li>• Inserts the wording that the decision “is urgent “ and cannot reasonably be deferred (as this is the definition in the 2012 Regulations)</li> <li>• Makes reference to the agreement of the Business Chair or Deputy Business Chair to be consistent with Rule 14.2</li> </ul>
19. Report to Council	<ul style="list-style-type: none"> <li>• Summarises when Overview and Scrutiny can require a report from the Cabinet if there is concern the process for making a key decision has not been followed</li> <li>• Inserts additional wording “treated as a Key decision or not” included in the forward plan – this is the wording in the 2012 Regulations</li> <li>• Refers to Rule 17 at 19.1 (2) for ease of reference</li> </ul>

<p>24. Decisions by individual members of the Cabinet</p>	<ul style="list-style-type: none"> <li>• Sets out what happens if an individual Cabinet members makes a key decision</li> <li>• Adds a note for clarity to state that the Leader’s current scheme of delegation does not provide for formal decisions by individual Cabinet Members</li> </ul>
<p>26. Overview and Scrutiny Committees’ access to documents</p>	<ul style="list-style-type: none"> <li>• Summarises what documents O &amp; S Committees can request from Cabinet</li> <li>• Notes O &amp; S Committees are not entitled to documents in draft form or parts containing exempt or confidential information (unless they are scrutinising)</li> </ul>
<p>27. Additional Rights of Access for Members</p>	<ul style="list-style-type: none"> <li>• Sets out when members may inspect cabinet documents</li> <li>• Notes at 27.4 these rights are in addition to any other rights members may have</li> <li>• Adds a sentence referring to members right to seek information under the “need to know” in order to properly discharge their duties. Adds that in the event of a dispute the final decision will be for the MO.</li> </ul>

- (3) Members of the Constitution Working Group considered this report at their meeting on the 10 February 2021 and agreed to recommend that full Council approves the proposed amendments to the Access to Information Procedure Rules, but subject to retaining all references to “political assistants”. It was agreed that although the Council does not currently employ political assistants this might change and a footnote should be added to the Rules clarifying the position.

### **Officer Delegation Scheme**

- (1) The Officer Delegation Scheme at Part 4 of the Constitution sets out those functions which have been delegated to senior officers of the Council and sets out a framework for how such delegations should be exercised.
- (2) The scheme lists service responsibilities for the Head of Paid Service and Executive Directors and mandates them to enter into detailed internal schemes of management for their own department which must be reviewed annually and agreed with the Head of Paid Service.
- (3) Proper Officer functions are listed in a table and at paragraph 6.5 the Head of Paid Service is given authority to appoint any Proper Officer not covered by the scheme.
- (4) The Scheme provides that the person or body making the delegation may at any time resume responsibility for a particular matter, or generally, and so may exercise the function despite the delegation.
- (5) The scheme also provides that an Officer may refer a delegated matter to the Head of Paid Service (or the person or body making the delegation) and it will be appropriate to do so:
  - to the Head of Paid Service where the matter raises issues of corporate priorities or the coordination of various functions
  - to the person or body making the delegation if the matter is controversial, raises issues of policy or could by its scale or complexity expose the Council to major corporate risks which cannot be contained within directorate budgets
- (6) Officers are required to ensure decisions are consistent with Council policy, within approved spending limits and in the best interests of residents and the Council as a whole. Elected members should be informed/consulted depending on the nature or sensitivity of the decision.
- (7) Paragraph 3 deals with Conflicts of Interest and sets out a cascade of responsibility where an officer finds they are conflicted.

- (8) Paragraph 5 sets out general conditions and limitations which all officers should abide by including the need to fully understand the relevant Council Policies, an awareness of legal requirements and risk and equality impact assessments. Decisions need to be consistent with the Councils Budget Strategy and officers must not commit the Council to financial obligations beyond those approved by Council. If an issue is politically sensitive or likely to affect significant numbers of residents members should be consulted and officers do not have the power to make a key decision (other than the Head of Paid Service or Executive Directors in an urgent situation. This section also deals with allocation or reallocation of functions by the Head of Paid Service and periods of absence.
- (9) Paragraph 6 sets out General Delegations to the Head of Paid Service, Executive Directors, section 151 Officer to:
- Take all lawful action to deliver agreed strategy plans and policy within their area of responsibility and within approved budgets, service plans, contract & financial procedural rules and the general obligation to act in the best interest of residents and the Council and to achieve value for money
  - To incur expenditure on the Council's behalf within sums approved by the Council and to procure goods and services
  - To deal with invitation and acceptance of tenders within the limits of the Contract Procedure Rules
  - To serve or place statutory or other notices
  - After consultation with the Legal Services Manager to authorise instituting, defending or appearing in criminal or civil proceedings in relation to any legislation within their area of responsibility
  - To settle matters arising from Ombudsman's recommendations under £10,000
  - In consultation with HR to put in place staffing and management arrangements
  - To delegate in writing any delegated functions to other officers
- (10) If decisions have significant on-going financial commitments, legal obligations or changes to the way services are provided Cabinet approval is required.
- (11) The Legal Services Manager and Chief Fire Officer have specific delegations.
- (12) Paragraph 7 sets out the requirements to record decisions and be accountable for them and paragraph 8 sets out areas of responsibility which are set out in more detail for the Head of Paid Service and Executive Directors in paragraphs 8- 15.

### **Scheme of Delegation to Officers**

- (13) The proposed amendments to the Officer Scheme of Delegation is attached at Appendix B and briefly provide the following:

<b>Paragraph</b>	<b>Content</b>
2. Basis of Delegation	<ul style="list-style-type: none"> <li>• Amends paragraph 2.3 to add that Officers should also act in accordance with the Finance and Contract Procedure Rules as well in accordance with Council policy, approved spending limits &amp; in the</li> </ul>

	best interest of residents as well as the Council as a whole
3. Conflicts of Interest	<ul style="list-style-type: none"> <li>• Adds an explanation at paragraph 3.1 to clarify that s117 of the Local Government Act 1972 relates to “contracts where officers may have a direct or indirect pecuniary interest”</li> </ul>
4. The Context for the exercise of functions	<ul style="list-style-type: none"> <li>• Adds an additional sentence that the Head of Paid Service will also approve internal schemes of management for the areas which fall within their responsibility. This was a gap in the original wording.</li> </ul>
5. General Conditions and Limitations	<ul style="list-style-type: none"> <li>• Adds a reference to compliance with the Finance and Contract Rules at paragraphs 5.2 &amp; 5.6 and signposts to the definition of a key decision at a paragraph 5.6</li> </ul>
6. General Delegations to Head of Paid Service & Executive Directors	<ul style="list-style-type: none"> <li>• Adds a new section on delegations to the Chief Fire Officer at paragraph 6.4</li> </ul>
9. The Chief Executive	<ul style="list-style-type: none"> <li>• At paragraph 9.1 inserts overall responsibility for the management and coordination of employees appointed by the Council from 9.3 &amp; inserts new reference to section 151 and MO</li> <li>• Amends list of responsibilities at 9.3 to reflect up to date list</li> </ul>
10 – 14 Executive Directors	<ul style="list-style-type: none"> <li>• Updates responsibilities of all Executive Directors to reflect current responsibilities</li> </ul>
16. Detailed Scheme of Management	<ul style="list-style-type: none"> <li>• Inserts reference to the Head of Paid Service agreeing a scheme for their service areas</li> </ul>

Part 2 Statutory Functions which are allocated to Officers – Proper Officers	<ul style="list-style-type: none"> <li>• Amends to correct titles</li> <li>• Inserts new references to appointment of Chief Fire Officer, Director of Public Health, SIRO, DPO, Caldicott Guardian, SRO under RIPA legislation</li> </ul>
Part 2 Proper or appropriate officers	<ul style="list-style-type: none"> <li>• Updates names where functions have changed or for consistency</li> <li>• Updates legislation where this has changed</li> </ul>

- (14) Members of the Constitution Working Group considered this report at their meeting on the 10 February 2021 and agreed to recommend that full Council approves the proposed amendments to the Officer Scheme of Delegation at Part 4 of the Constitution as set out fully in Appendix B to this report.

### **Implications**

<b>Policy</b>	The proposed amendments will align the Constitution with the latest guidance & legislation.
<b>Finance and value for money</b>	No direct costs will be incurred by updating the Constitution.
<b>Legal</b>	The Constitution requires regular review to ensure it is up to date and complies with best practice.
<b>Procurement</b>	N/A
<b>Human Resources</b>	There are no additional staffing resources required as a result of this report.
<b>Property</b>	N/A
<b>Equalities</b> (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	N/A
<b>Risk Assessment</b>	It is important that the Councils Constitution is up to date and reflects the latest legislation and best practice to minimise risk of challenge and reputational damage. The Council's Constitution should reflect the latest legislative position to provide clarity & avoid any dispute as to which should prevail.
<b>Crime &amp; Disorder</b>	N/A
<b>Customer Consideration</b>	N/A

<b>Carbon reduction</b>	N/A
<b>Health and Wellbeing</b>	N/A
<b>Wards</b>	All

**Background papers:**

Council Constitution

**Report sign off.**

***Authors must ensure that officers and members have agreed the content of the report:***

	Full Name of Officer
Deputy Monitoring Officer/Legal	Helen Lancaster
Executive Director of Finance & S151 Officer	N/A
Relevant Executive Director	N/A
Chief Executive	N/A
Portfolio Holder(s)/ Business Chair	Councillor B Flux

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