

**Committee Name and Date of Committee Meeting**

Council – 25 July 2018

**Report Title**

Proposed Amendments to the Constitution – Responsibility for Functions – Scheme of Delegation and Terms of Reference

**Is this a Key Decision and has it been included on the Forward Plan?**

No

**Strategic Director Approving Submission of the Report**

Shokat Lal, Assistant Chief Executive

**Report Author(s)**

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**Ward(s) Affected**

Borough-Wide

**Report Summary**

This report is submitted to introduce a proposed new ‘Responsibility for Functions’ section of the Constitution, which has been recommended by the Association of Democratic Services Officers (ADSO), as part of the wider review of the Constitution. The proposals from ADSO have been reviewed by the Constitution Working Group, a body of members from both political groups in operation on the Council, and are presented for approval and adoption within the Constitution.

The proposed new ‘Responsibility for Functions’ is a more concise document which has been drafted with a view to Strategic Directors being required to prepare and publish sub-schemes of delegation for their directorates, which is consistent with the previously agreed changes in respect of the publication of decision records for delegated decisions taken by officers.

**Recommendations**

1. That the ‘Responsibility for Functions’ at Appendix 1 be approved and adopted as Appendix 9 of the Constitution.
2. That the terms of reference for the Overview and Scrutiny Management Board and Select Commissions be deleted from the Overview and Scrutiny Procedure Rules at Appendix 3 of the Constitution.

3. That the Assistant Director of Legal Services be authorised to make consequential amendments to the other parts of the Constitution arising from the new 'Responsibility for Functions'.
4. That Strategic Directors be required to prepare Sub-Schemes of Delegation detailing the discharge of functions within their directorate and publish decision records in accordance with the Access to Information Rules in respect of delegated officer decision making.

**List of Appendices Included**

Appendix 1 Proposed Appendix 9 'Responsibility for Functions'

**Background Papers**

Current Appendix 9 of the Constitution – Scheme of Delegation

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

Yes

**Exempt from the Press and Public**

No

## **Proposed Amendments to the Constitution – Responsibility for Functions – Scheme of Delegation and Terms of Reference**

### **1. Background**

- 1.1 The Council has sought to strengthen its governance arrangements as part of Rotherham's improvement journey and has reviewed various aspects of its Constitution in the past two years. Commencing with the implementation of the recommendations of the Governance Review Working Party in May 2016, the Council has made the changes in respect of:-
- definitions of a Key Decision
  - delegated decision making by officers
  - financial regulations and contract standing orders
- 1.2 One of the recommendations from the Governance Review Working Group was that an external review of the Constitution should be undertaken. The Council commissioned the Association of Democratic Services Officers (ADSO), the national professional body for local authority governance and democratic services, to undertake a review of the following areas of the Constitution:-
- Executive Procedure Rules
  - Overview and Scrutiny Procedure Rules
  - Access to Information Rules
  - Standing Orders
  - Scheme of Delegation
- 1.3 ADSO's recommendations in respect of Standing Orders were accepted by the Council in September 2017 when that part of the Constitution was amended and renamed as Council Procedure Rules. In May 2018, the Council approved amendments to the Executive Procedure Rules, Overview and Scrutiny Procedure Rules and Access to Information Procedure Rules.
- 1.4 This report is concerned with proposals to adopt a new 'Responsibility for Functions' section of the Constitution to replace the existing Scheme of Delegation.
- 1.5 The current Scheme of Delegation can be found at Appendix 9 of the Constitution. The document has been amended occasionally in recent years, but the view shared by ADSO and officers was that it is fundamentally out of date and does not reflect the current management structure in operation at the Council. The current document is lengthy, unclear and does not clearly identify those functions which are reserved to the Council and its committees (non-executive functions) and those which must be discharged by the Cabinet (executive functions).

## 2. Key Issues

- 2.1 Unlike recent amendments to the Constitution, ADSO have not recommended that the Scheme of Delegation be amended and updated. They have instead recommended the adoption of a new part of the Constitution, which clearly defines non-executive and executive decision making, and includes all information concerning the terms of reference of committees, sub-committees, boards and panels in one place. The proposed 'Responsibility for Functions' covers the same subject matter as the current Scheme of Delegation, but it does so in a way that clearly sets out the functions of the Council and which body or officer is authorised to make decisions or take action.
- 2.2 To complement the proposed new 'Responsibility for Functions', ADSO have recommended that each Strategic Director prepare a sub-scheme of delegation for the services for which they are responsible. This recommendation has been made to ensure that the overarching Officer Delegation Scheme does not become a weighty tome. The principle of a sub-scheme of delegation is that Strategic Directors would be required to clearly establish how decisions will be taken and by whom within their directorate. These sub-schemes would be published and any amendments would be published via the delegated decision making process.
- 2.3 Having proposed an approach where decision making is separated into:-
- Local Choice Functions – those functions which may be reserved to the Council rather than being designated as executive functions
  - Council (non-executive) Functions – those functions which, by law, cannot be the responsibility of the Cabinet
  - Executive Functions – all other functions
- 2.4 The terms of reference are listed towards the end of the document are largely the same as the existing terms of reference, but with the following changes:-
- Inclusion of the terms of reference for the Overview and Scrutiny Management Board and Select Commissions (these are presently located in the Overview and Scrutiny Procedure Rules).
  - Clarifying additional functions for the Staffing Committee, which include:-
    - To establish at the appropriate time panels of members as a sub-committee to act as appointment panels for the appointment of the Chief Executive, Chief Officers (except where the Chief Executive exercises his delegation to appoint Non-Statutory Chief Officers (as defined in the Officer Employment Procedure Rules)) and designated Deputy Chief Officers
    - To determine the assignment and re-grading of posts:
      - above SCP49 (PO15) and below £100,000 p.a.; or
      - up to and including SCP49 (Grade L) where there is disagreement between the Chief Executive and the relevant Chief Officer, or where the Chief Executive considers that the matter has corporate significance.
    - To determine the payment of honoraria exceeding 12 months duration in respect of posts above Grade L.

- To determine policies relating to local government pensions and discretionary compensation for early termination of employment.
- Delegation to the Leader of the Council the authority to determine the membership of Senior Officer Appointment Panels, having regard to the roles that are to be appointed to.
- Re-naming the Introductory Tenancy Review Panel to become the Housing Tenancy and Anti-Social Behaviour Review Panel to reflect the powers of the body that were delegated to it in 2014.
- Removal of the Early Release and Flexible Retirement Panel and delegation of the function to the Chief Finance Officer, subject to the Staffing Committee determining the policy for the Early Release and Flexible Retirement

2.5 The proposals were reviewed by the Constitution Working Group on 13 July 2018. The changes recommended by Members were:-

Page	Proposal from ADSO	Recommendation by Constitution Working Group
11 (Non-Executive Functions delegated to the Chief Executive – (m) and (n))	To delegate authority to the Chief Executive to:- <ul style="list-style-type: none"> <li>• To dissolve small parish councils</li> <li>• To make orders for grouping parishes, dissolving groups and separating parishes from groups</li> </ul>	To delegate authority to the Chief Executive to:- <ul style="list-style-type: none"> <li>• To dissolve, <b>subject to Council approval</b>, small parish councils</li> <li>• To make orders, <b>subject to Council approval</b>, for grouping parishes, dissolving groups and separating parishes from groups</li> </ul>
31 (Executive Functions of the Strategic Director of Finance and Customer Services)	To delegate authority to the Strategic Director to determine requests for early release and flexible retirement, in consultation with the Assistant Chief Executive	Determining, in accordance with agreed policy, requests for early release and flexible retirement, in consultation with the relevant Cabinet Member.

<p>42 (Membership of the Senior Officer Appointments Panel)</p>	<ul style="list-style-type: none"> <li>• Delegation to the Leader of the Council the authority to determine the membership of Senior Officer Appointment Panels, having regard to the roles that are to be appointed to.</li> </ul>	<p>The Panel shall comprise:-</p> <ul style="list-style-type: none"> <li>• Leader of the Council</li> <li>• Deputy Leader of the Council</li> <li>• Relevant Cabinet Member(s)</li> <li>• Leader of the Majority Opposition Group</li> <li>• Chair of Overview and Scrutiny Management Board</li> <li>• Other members to be determined by the Leader of the Council, in order to achieve a representative composition reflecting the diversity of the Council</li> </ul> <p>who will have undertaken appropriate training in respect of recruitment and selection</p>
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2.6 The Constitution Working Group delegated authority to the Assistant Director of Legal Services to incorporate proposed changes to the terms of reference for the Standards and Ethics Committee to reflect changes arising from the Localism Act 2011 which were not accurately reflected in the existing terms of reference. Other proposed changes relate to:-

- the removal of monitoring the operation of the Council's Customer Complaints, which does not link to the overarching work of the Standards and Ethics Committee is a matter that the Overview and Scrutiny Management Board has listed within its work programme on annual basis.
- the removal of reviewing procedures for the appointment of council representatives to outside bodies, which has been reviewed by the Cabinet and changes approved by the Council

2.7 The proposed amendments to the Constitution require the removal of the terms of reference for the Overview and Scrutiny Management and Select Commissions from the Overview and Scrutiny Procedure Rules at Appendix 3 of the Constitution and Council is recommended to approve this change.

2.8 The Council is recommended to delegate authority to the Assistant Director of Legal Services to making consequential amendments to the Constitution arising from the changes made to Appendix 9. Any such amendments will be reflected in the published version of the Constitution on the Council's website and decision records will be published when such changes are made.

- 2.9 One of the main recommendations from ADSO is that the Council require Strategic Directors to prepare sub-schemes of delegation detailing how functions will be discharged within their directorate. This proposal is recommended for approval by the Council.

### **3. Options considered and recommended proposal**

- 3.1 The Council has committed to review various parts of the Constitution as part of its improvement journey. The proposals set out above in this report have been put forward by ADSO on the basis of strengthening governance arrangements.

### **4. Consultation on proposal**

- 4.1 The Constitution Working Group was consulted on the proposals ahead of their submission to Council for approval. A number of changes were recommended by ADSO which have been subject to change by the Constitution Working Group prior to proposals being submitted to this meeting. Other than the changes proposed which are set out in the table at paragraph 2.5 above, the Constitution Working Group agreed to recommend the 'Responsibility for Functions' for adoption by Council within the Constitution.

### **5. Timetable and Accountability for Implementing this Decision**

- 5.1 The proposed changes to the Constitution will be implemented with immediate effect from 25 July 2018. The Council will then consider proposals for amendments to this section of the Constitution at the Annual Meeting each year.
- 5.2 The Assistant Director of Legal Services will be responsible for ensuring implementation of the changes recommended in this report once agreed.
- 5.3 Strategic Directors will be required to have prepared a sub-scheme of delegation for each directorate of the Council, which will be published online through an officer decision record. Such sub-schemes of delegation must be reviewed annually following the Council's approval of the 'Responsibility for Functions' section of the Constitution.

### **6. Financial and Procurement Advice and Implications**

- 6.1 The proposed 'Responsibility for Functions' accord with the changes made to the Financial and Procurement Procedure Rules made in 2017.
- 6.2 There are no further financial or procurement implications arising from the proposed changes to the Constitution.

## **7. Legal Advice and Implications**

- 7.1 As a creature of statute, the Council should require the Constitution to be current and coherent as the key enabling document that enables the authority to exercise its decision making powers and procedures. The changes proposed within this report are compliant with the provisions of the Local Government Act 2000, which introduced the requirement for local authority constitutions, and subsequent legislation which has further strengthened local authority governance.

## **8. Human Resources Advice and Implications**

- 8.1 There are no implications for children and young people or vulnerable adults associated with this report.

## **9. Implications for Children and Young People and Vulnerable Adults**

- 9.1 There are no implications for children and young people or vulnerable adults associated with this report.

## **10. Equalities and Human Rights Advice and Implications**

- 10.1 ADSO were asked to consider equalities implications as part of the review of the Constitution and have not identified any negative impacts. In reviewing ADSO's recommendations, the Constitution Working Group had regard to equalities requirements and did not identify issues within the proposals recommended as part of this report. Consequently, there are no equalities or human rights implications arising from the proposals within the report.

## **11. Implications for Partners**

- 11.1 There are no implications for partners arising from the proposed amendments to the Constitution.

## **12. Risks and Mitigation**

- 12.1 As these parts of the Constitution have not been reviewed in full for some time, any update to change their provisions creates the potential for confusion and misunderstanding. Whilst the purpose of making changes to improve the Constitution is to remove confusion and misunderstanding, there are risks in making the changes:

<b>Risk</b>	<b>Mitigation</b>
Members may be unaware of the scheme of delegation	Clear communication of the changes is needed  Make them available online  Consider a training programme to explain the effect of the changes



New scheme of delegation may be unclear or have ambiguities	<p>Monitor the application of the new scheme</p> <p>The Monitoring Officer to provide advice and guidance where required</p> <p>Review and revise where required after one year of operation</p>
New scheme of delegation may have gaps	The Monitoring Officer to issue guidance on an interim basis until the next review addresses the gaps permanently.
External changes (e.g. new legislation)	The Monitoring Officer will ensure that a report is brought forward to propose any necessary changes at the earliest opportunity.

**13. Accountable Officer(s)**

Dermot Pearson, Assistant Director of Legal Services and Monitoring Officer  
James McLaughlin, Head of Democratic Services

This report is published on the Council's [website](#).