

CANNOCK CHASE COUNCIL
COUNCIL
25th MAY 2011
REPORT OF THE MONITORING OFFICER
AMENDMENTS TO THE CONSTITUTION
KEY DECISION – (NO)

1. Purpose of Report

- 1.1 To consider amendments to the Constitution and approve and adopt the same

2. Recommendation(s)

- 2.1 That the Council adopt the amendments to the Constitution set out in the Annex to this report.

3. Summary (inc. brief overview of relevant background history)

- 3.1 The constitution was last reviewed in 2008. A comprehensive review has been commenced the results of which will be brought to Council in the near future.
- 3.2 The Local Government and Public Involvement in Health Act 2007 provides for a new form of Leader and Cabinet executive and this requires some changes to the Constitution. It is necessary to make these changes before the election of the new Leader of the Council and the Cabinet so that these elections can be made lawfully.
- 3.3 The current rules provide for a link between the Local Area Agreement blocks and the Cabinet and Shadow Cabinet portfolios. With the demise of the Local Area Agreement these provisions need to be removed.

4. Key issues and Implications

- 4.1 The Local Government and Public Involvement in Health Act 2007 amended the Local Government Act 2000 to make changes to the form of Leader and Cabinet executive. These amendments have now come into effect for this Council.
- 4.2 The principal changes in the new Leader and Cabinet model are:-
- (a) The Leader of the Council's term of office is from his/her election until the first annual meeting of the Council after their normal day of retirement as a Councillor. The maximum term is therefore 4 years but will be shorter if the Leader's term of office as a Councillor has less than 4 years to run.

- (b) If the Leader is not re-elected he/she remains as the Leader of the Council and as a member of the Council until the Annual Meeting after the election when their successor as Leader will be elected.
 - (c) The Leader must appoint a Deputy Leader. This was previously optional.
 - (d) The form of the Cabinet (number of members and portfolios) is now entirely a matter for the Leader subject to the legal requirement that there must be between 2 and 9 cabinet members. Previously the Council could set the number of members and the portfolios.
- 4.3 The current Constitution makes provision for the Cabinet and Shadow Cabinet portfolios to reflect the Local Area Agreement blocks. This is now both ineffective as the Local Area Agreement no longer exists and would be unlawful as the Council can no longer constrain the Leader's discretion to set the portfolios.
- 4.4 The implementation of these changes requires amendments to Sections 8 (The Cabinet), 10 (The Shadow Cabinet) and 39 (Council Procedure Rules). The recommended amendments are set out in the Annex to this report.

5. Conclusions and Reason(s) for the Recommendation(s)

- 5.1 It is recommended that the amendments to the Constitution set out in the Annex to this report be approved with immediate effect.

6. Report Author Details

Alistair Welch, Monitoring Officer and Solicitor

SCHEDULE OF ADDITIONAL INFORMATION

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Section 1

Contribution to Council Priorities (i.e. Corporate Plan)

The amendments to the Constitution are required to ensure the continued lawfulness of the Council's decision making.

Section 2

Contribution to Promoting Community Engagement

Not applicable

Section 3

Financial Implications

None

Section 4

Legal Implications

The legal implications are set out in the report. Failure to implement the provisions could lead to a challenge to the lawfulness of the appointments of the Leader and Cabinet.

Section 5

Human Resource Implications

None

Section 6

Section 17 (Crime Prevention)

Not applicable

Section 7

Human Rights Act Implications

None

Section 8

Data Protection Act Implications

None

Section 9

Risk Management Implications

None.

Section 10

Equality and Diversity Implications

None

Section 11

List of Background Papers

None

Section 12

Report History

Council Meeting	Date
Extra Ordinary Meeting	8 December, 2010

Annex

Section 8

The Cabinet

8.1 ROLE

The Cabinet (acting in the capacity of an Executive) will carry out all of the Council's functions which it is required to do by law or allowed to do under this Constitution. These are identified in Part 3 of this Constitution.

8.2 FORM AND COMPOSITION

- a) The Cabinet will consist of the Leader of the Council (the Leader) together with at least 2 but not more than 9 Councillors appointed to the Cabinet by the Leader, one of which shall be the Deputy Leader should the Leader so determine that a Deputy be appointed.
- b) The Leader shall determine the number of Cabinet members and the nature of their portfolios.
- c) The Leader shall report the form and composition of the Cabinet to the Annual Council Meeting each year and, should any changes occur during the municipal year, to the first available meeting of the Council thereafter.
- d) The Cabinet may create such Committees (referred to as Cabinet Committees) for any such purposes if so deemed necessary

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8.3 LEADER

- a) The Leader will be a Councillor elected to the position of the Leader by the Council usually at the first Annual General Meeting (AGM) after the previous Leader's normal day of retirement as a Councillor. The Leader will hold office until the first Annual General Meeting (AGM) after their normal day of retirement as a Councillor or until any of the following events occur (if earlier):
 - i) he/she resigns from office, or
 - ii) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (as amended) (although he/she may resume office at the end of the period of suspension), or
 - iii) he/she is no longer a Councillor, or

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- iv) he/she is removed from office by resolution of the Council following consideration of a written motion of no confidence signed by a minimum of 25% of the membership of the Council, or
 - v) he/she is removed by Council in order to implement a recommendation of the Standards Board for England or the Council's Standards Committee following a local determination.
- b) If the Leader ceases to hold office under the provisions of 8.3(a)(i)-(v) above a the Council shall elect a new Leader either at the Council meeting at which he/she is removed or at a Council meeting to be called as soon as practicable.
 - c) For the avoidance of doubt the same Councillor may be re-elected as Leader on one or more occasions if the Council so wishes.
 - d) The Leader shall not cease to be a member of the Council on his/her ordinary day of retirement as a Councillor but shall continue to be a member during his/her term of office as Leader.

8.4 OTHER CABINET MEMBERS

- a) Other Cabinet members shall be appointed by the Leader at the AGM and shall hold office for such time as the Leader determines or until any of the following events occur (if earlier) :
 - i) he/she resigns from office, or
 - ii) he/she are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension), or
 - iii) he/she are no longer a Councillor, or
 - iv) he/she are removed from office, either individually or collectively, by the Leader, or
 - v) he/she are removed by Council in order to implement a recommendation of the Standards Board for England or the Council's Standards Committee following a local determination, or
 - vi) the Leader for the time being ceases to hold that office,
- a) For the avoidance of doubt the same Councillor may be re-appointed on one or more occasions if the Leader so wishes.
- c) The Leader may co-opt any such member as he/she deems appropriate to assist the Cabinet (or its Cabinet Committee) in its decision-making. Such co-opted members shall not have voting rights and shall not constitute a 'member' for the purposes of a quorum. The co-optee shall be an advisory appointment only.

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8.5 DEPUTY LEADER

The Leader shall appoint a member of the Cabinet as Deputy Leader who shall hold office until:

- a) The Leader for the time being ceases to hold that office.
- b) He/she resigns from the office.
- c) He/she ceases to be a member of the Cabinet.
- d) He/she is removed from that office by the Leader.

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Section 10

The Opposition & Shadow Cabinet

10.1 ROLE OF SHADOW CABINET

- a) The role of the Shadow Cabinet shall be to oppose, question, challenge and support the decisions of Cabinet as they see fit.
- b) The Shadow Cabinet shall not act as a Scrutiny Committee or undertake a Scrutiny role as defined in the legislation.

10.2 FORM AND COMPOSITION

- a) Should no political group on the Council consider itself able to constitute the formal opposition to the Cabinet, there will be no Shadow Cabinet.
- b) The Shadow Cabinet will consist of the Leader of the Opposition (Opposition Leader) together with at least 2 but not more than 9 Councillors appointed to the Shadow Cabinet by the Opposition Leader.
- c) The Opposition Leader shall determine the number of Shadow Cabinet members.
- d) The Shadow Cabinet or any one or more members of the Shadow Cabinet will be entitled to attend and speak at any Cabinet meeting on giving at least 48 hours prior written notice to the Chief Executive.
- e) The Leader of the Council may on giving at least 48 hours prior written notice request the attendance at a Cabinet meeting of any one or more members of the Shadow Cabinet.

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THE REMAINDER OF THIS SECTION IS UNCHANGED FROM THE PREVIOUS VERSION

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PART 4

SECTION 39

*COUNCIL
PROCEDURE RULES*

Council Procedure Rules

1. MEETINGS OF THE COUNCIL

- (1) The annual meeting of the Council must be held as provided by the Local Government Act 1972 on a date and at a time fixed by the Council.
- (2) Other meetings of the Council shall be held at such other days as the Council may fix.
- (3) An extraordinary meeting of the Council may be called at any time by the Chairman or the Monitoring Officer.
- (4) An extraordinary meeting of the Council may also be called provided that at least 5 Members have signed a requisition to that effect and have passed that to the Chairman of the Council. If, at the expiry of 7 days from the receipt of the request the Chairman fails to call the requested extraordinary meeting within 14 days then any 5 Members (which can be the same Members as made the initial request) may call an extraordinary meeting of the Council to which the Proper Officer shall so arrange.
- (5) The date, time and place of meetings will be determined by the Proper Officer.
- (6) The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules and current regulations. The Proper Officer will send a summons by post or electronic means to every member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted and will be accompanied by such reports as are available.

2. CHAIRMAN AND VICE-CHAIRMAN OF THE COUNCIL

- (1) The election of the Chairman of the Council shall be the first business to be transacted at the annual meeting of the Council.
- (2) The Council shall at the annual meeting appoint, by election, a Vice-Chairman.
- (3) The Chairman of the Council shall, if present, preside at a meeting of the Council and, if the Chairman is absent, the Vice-Chairman shall, if present, preside. If the Chairman and Vice-Chairman are absent a Member appointed, by election, by those present shall preside.
- (4) Any power or duty of the Chairman of the Council in relation to the conduct of a meeting may be exercised by the Member presiding at a meeting.

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- (5) The Chairman and Vice-Chairman will hold office for the municipal year and shall not be removed from office unless they resign, or are disqualified by law from remaining as a Councillor or if there is a change in the administration of the Council, whereupon a Member may move that the Chairman and Vice-Chairman be removed and that a new Chairman and Vice-Chairman be nominated and appointed. For the avoidance of doubt, the Chairman or Vice-Chairman cannot be removed by a motion of “no confidence” or other similar motion.

3. QUORUM

No business shall be dealt with at a meeting of the Council unless one quarter of the whole number of Members of the Council is present. If there is no quorum the meeting must be adjourned immediately and any remaining business postponed either to a time fixed by the Chairman at the adjournment or if no time is fixed, the next ordinary meeting.

4A. ORDER OF BUSINESS - ANNUAL MEETING

- (1) In a year when there is an ordinary election of Councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the Annual meeting will take place in March, April or May:
- (a) To elect a person to preside if the Chairman or Vice-Chairman of the Council is not present;
 - (b) To elect the Chairman of the Council;
 - (c) To appoint, by election, the Vice-Chairman of the Council;
 - (d) To approve the minutes of the last meeting;
 - (e) To receive any announcements from the Chairman and/or Head of the paid service;
 - (f) To elect the Leader of the Council;
 - (g) To receive notification from the Leader of the Council of the number and identity of Cabinet Members and their Portfolios;
 - (h) To receive the acceptance of office from the Leader of the Opposition;
 - (i) To receive notification from the Leader of the Opposition of the number and identity of the Shadow Cabinet Members and their Portfolios;

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- (j) To appoint at least one Overview and Scrutiny Committee (referred to as a Scrutiny Committee), a Standards Committee, a Licensing and Public Protection Committee, a Planning Control Committee and such other Committees as the Council considers appropriate;
 - (k) To receive and adopt any changes to the Constitution and decide which Committees and other bodies to establish for the municipal year;
 - (l) To decide the size and terms of reference for those Committees for the municipal year and other bodies including any such scheme for substitute Members;
 - (m) To appoint the Chairman and Vice-Chairman of Committees provided that advance notification of any Political Group's proposed Chairman, Vice-Chairman and membership has been circulated by the Proper Officer to all Members at least 24 hours prior to the Annual Meeting.
 - (n) To decide the allocation of seats to political groups in accordance with the current legislation;
 - (o) To appoint to Committees those Councillors named by the Group Leader.
 - (p) To appoint representatives to outside bodies provided that Group Leaders have submitted their nominations to the Proper Officer at least 48 hours prior to the commencement of the Annual Meeting. The submitted nominations shall be circulated to Members of the Council at the meeting and no amendments shall be permitted once the nominations are received by the Proper Officer.
 - (q) To agree the scheme of delegation or such part of it as the Constitution determines it is for the Council to agree;
 - (r) To consider any other business set out in the notice convening the meeting.
- (2) The order of business may be changed, insofar as it is statutorily possible, at the discretion of the Chairman or by motion passed without discussion. The motion need not be in writing.

4B. ORDER OF BUSINESS - ORDINARY MEETINGS

The order of business at every meeting of the Council shall be:-

- (a) To choose the person to preside if the Chairman and Vice-Chairman are absent;
- (b) To approve as a correct record and sign the minutes of the last meeting of the Council;
- (c) To deal with any deputations or public questions received in accordance with the Council's approved schemes;
- (d) To receive any announcements from the Chairman and/or Head of the paid service;
- (e) In the event of the Leader being removed following a vote of 'no confidence' or a change in administration, to elect a Leader of the Council;
- (f) In the event of any change to the composition of the Cabinet (including the Leader), to receive notification from the Leader of the Council of the number and identity of Cabinet Members and their Portfolios;
- (g) In the event of a change in the leader of the Opposition, to receive the acceptance of office from the Leader of the Opposition;
- (h) In the event of any change to the composition of the Shadow Cabinet (including the Leader of the Opposition), to receive notification from the Leader of the Opposition of the number and identity of the Shadow Cabinet Members and their Portfolios;
- (i) In the event of any change in the Chair or Vice-Chair of a Committee, to appoint the Chair and Vice-Chair to such Committee.
- (j) In the event of any change in named membership of a Committee by a Group Leader, to appoint the newly named Member(s).
- (k) To dispose of business (if any) remaining from the last meeting;
- (l) To answer questions asked under Rule 8;
- (m) To consider reports and recommendations of the Cabinet, Committees and Panels;
- (n) To consider motions under Rule 6 in the order in which notice has been received;
- (o) To consider other business, if any specified in the summons.

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- (p) The order of business may be changed, insofar as it is statutorily possible, at the discretion of the Chairman or by motion passed without discussion. The motion need not be in writing.