

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

17 April 2012

Report of the Chief Solicitor & Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGES TO CONSTITUTION – APPOINTMENT OF AUTHORISED OFFICERS

1.1 Introduction

- 1.1.1 Part 2 of the Constitution provides that the Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.
- 1.1.2 As part of my ongoing review, I have considered the existing procedure for the appointment of 'Authorised officers'. In my view, changes could be made to this area to improve the ability of officers to effectively discharge their duties. This report sets out the existing scheme, and suggests appropriate amendments to the constitution.
- 1.1.3 The changes set out in this report were previously considered by Cabinet on 28 March 2012, who agreed the recommendations set out at 1.8.1 (a) and (b) in so far as they relate to executive functions.

1.2 Authorised officer appointments

- 1.2.2 Part 3 of the Constitution designates various posts as 'Authorised Officers' for the purposes of exercising powers falling within specified legislation. In practice, this approach requires that the constitution is updated each and every time a new Act or statutory instrument is passed where provision is made for the appointment of 'Authorised Officers'. Failure to do so may mean that officers are not empowered to fully discharge their duties until a report can be prepared for the next meeting of Cabinet or Council as appropriate. In some cases e.g. food safety, the consequences of not being able to act immediately could be serious.
- 1.2.3 With an ever increasing amount of new legislation, including statutory instruments to give effect to European Directives, I have therefore considered whether there is an alternative way of approaching the appointment of 'Authorised Officers'.
- 1.2.4 In order to allow greater flexibility, it is recommended that all Chief Officers (as defined in the Constitution) be authorised to appoint officers within their respective

services as 'Authorised Officers' for the purposes of any legislation falling within the purview of the Borough Council. In addition to providing operational flexibility to Chief Officers, this will obviate the need to report to Cabinet or Council for new authorisations each time a new piece of legislation is given royal assent.

- 1.2.5 Consistent with the present scheme, it is recommended that in every case, the relevant Chief Officer be required to ensure that officers authorised for the specific purposes in question are qualified and have had appropriate training to effectively discharge the function.
- 1.2.6 It is further recommended that all 'Authorised Officer' appointments shall be made in writing, with a copy of each authorisation being supplied to the Monitoring Officer for retention on a central file.

1.5 Legal Implications

- 1.5.1 Article 15 in part 2 of the Constitution sets out the procedure for review and revision of the Constitution. Changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

1.6 Financial and Value for Money Considerations

- 1.6.1 None.

1.7 Risk Assessment

- 1.7.1 The proposed changes will allow officers to enforce our statutory duties and powers effectively and efficiently.

1.8 Recommendations

- 1.8.1 It is **RECOMMENDED** that

- (a) all Chief Officers be authorised to appoint officers within their respective services as 'Authorised Officers' for the purposes of any legislation falling within the purview of the Borough Council (subject to the relevant Chief Officer ensuring that officers authorised for the specific purposes in question are qualified and have had appropriate training to effectively discharge the function);
- (b) all appointments of 'Authorised Officers' shall be recorded in writing, with a copy of each authorisation being supplied to the Monitoring Officer for retention on a central file;
- (c) the Monitoring Officer be authorised to amend the Constitution to give effect to the changes outlined in this report, including those agreed by Cabinet on 28 March 2012.

Background papers:

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Nil

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Chief Solicitor and Monitoring Officer