

Action 1 - Definition of Senior Officers (5.5 of notes of meeting 3rd July 2018 refers)

It is common throughout the Constitution to refer to types of people by class. The Council's employees are repeatedly referred to as 'officers' in the Constitution as a basic example and the term officer is seen again and again in legislation. Their role is expressly to "*give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely.*" However there is no wider definition or statutory definition of "senior officer". That term is exclusively a definition generated from the Constitution.

Part 3 of the Constitution (Page 21 of section 3 of that part) sets out delegations to officers.

It is worth reviewing the whole of the introduction to that Part to properly understand the definition and use of "Senior Officer" though please note that although clause 10 of the section provides the specific delegation and clause 5 provides a power to exercise delegation in absence – by other Senior Officers generally, or specified officers expressly.

General Provisions

1. *A **Senior Officer** or other person is authorised to exercise such powers as are shown in this scheme of delegation including those reasonably implied or reasonably incidental to the matters specified.*
2. *Exercise of the powers is without prejudice to the right of the Council to withdraw or amend any such power, and the person with a delegated power may decline to exercise it and refer the decision to the appropriate Committee.*
3. *In addition to these delegated powers, powers are also exercisable by officers through Financial Regulations, Contract Standing Orders, and elsewhere in this Constitution.*
4. *The delegated powers shall be exercised in accordance with Council policy and Standing Orders, Financial Regulations and any other guidance given by a Chief Officer.*
5. ***Any power delegated to a Senior Officer may be exercised by any other Senior Officer or by another employee nominated by a Senior Officer.***
6. *Each Senior Officer shall be a proper officer for any purpose required by a statute or statutory instrument which is not specified in this scheme of delegation to officers.*
7. *Where a power delegated to an employee is expressed to be exercisable following consultation with the Chairman of a Committee, in the absence of that Chairman the consultation shall take place with the Vice-Chairman.*
8. *Where a power delegated to an employee is expressed to be exercisable following*

consultation with a Cabinet member with portfolio responsibilities, in the absence of that member the consultation shall take place with the Leader or Deputy Leader in his absence.

9. A reference to any statute or regulation or similar includes any subsequent amendment or replacement.

10. References to Senior Officers are references to the Chief Executive, the Executive Director/Deputy Chief Executive and Directors..

There are several references to Senior officers, but the primary source of the powers granted to Senior officers is at page 22 of Part 3 of the Constitution. Whilst there are some duplications to other powers granted specifically to particular officers, generally these powers are granted by members to senior officers in order to provide "backstop" authority in order that urgent matters can proceed quickly or in the unexpected absence of key officers, to prevent paralysis at such times or when there is a dispute with one of those key officers.

Any Senior Officer

1. To make urgent decisions following consultation with the Leader or Deputy Leader of the Council and the Chairman of the Overview and Scrutiny Committee on any matters where it is not practicable to refer these to a meeting of the Council, the Cabinet or other Committee, provided that a full report on any decisions taken shall subsequently be made.

2. In the absence of the Monitoring Officer or Chief Finance Officer and their appointed deputies to exercise all powers delegated to them so far as the law permits.

3. To act as an authorised Deputy Electoral Registration officer, as appointed by the Returning Officer in accordance with Section 52 Representation of the People Act 1983.

4. To authorise and issue any documents for the purposes of any of the Council's functions, including all court proceedings.

5. To authorise any action under Council byelaws including prosecution.

6. To authorise the spend of section 106 monies of under £50,000 following consultation with the relevant cabinet member and nominated ward member.

7. To affix and attest the seal of the Council to any deed or other document.

8. To progress individual asset renewal projects funded from the Asset Renewal Programme subject to a maximum value of £175,000, in conjunction with the Chief Finance Officer.

9. (a) To approve requests for termination of employment on grounds of redundancy or efficiency of service in consultation with the Chief Finance Officer (except for members of the Corporate Management Team) providing that the costs of such requests pay back within a two year period.

(b) To enact efficiency or redundancy retirements (when Cabinet authorisation exists) and flexible employment contracts within approved employment policy.

(c) to approve requests for flexible retirement (except for members of the Corporate Management team) in accordance with the Council's policy

providing that the costs of such requests pay back within a two year period.

10. To exercise the power of the right to enter and survey land pursuant to Section 172 of the Housing and Planning Act 2016 on notice to the owners of the land.

Action 2 - Definition of Motions and Counter motions (6.4 of notes of meeting 3rd July 2018 refers)

Generally the control of a meeting is within the gift of the Chairman of that meeting, and the law allows a great deal of flexibility within that concept. However the Constitution provides some rules on the handling of motions. Technically a counter motion is an amendment motion and whilst the term "Counter motion" is used in various documents, it is not specifically referred to in the Constitution.

This Council follows the model for decision making which is helpful in that most guidance can be used directly to analysis of how the definitions can and should be applied.

Motions are in public law terms broadly of two types: original and procedural.

The first (also known as a proposal) is one putting forwards a substantial issue for consideration and (if approved), action. These are the typical matters put forwards in Committee agendas – for example, section 18.1 of Part 4 of the Constitution provided that "A Member may have a proposal discussed at a Council meeting by giving written notice of it to the Director of Corporate Services at least 7 working days before the date of the Council meeting."

A Procedural motion (sometimes called a formal motion) is one affecting matters of procedure or form about the handling of the meeting. Procedural motion requirements are provided at section 8.6 of Part 4 of the Constitution;

8.6 A Member may raise, without notice, any matter relating to the procedure of the meeting (for example rules of debate, reference of an item to a committee, appointing a new committee, sub-committee or task and finish group etc., or a point of order – that is, an alleged breach of a statutory provision or a Standing Order).

Original motions may not be moved (put to the committee through its chairman) unless prior notice has been given so that its terms may be included in the agenda. This is necessary so that the Council can comply with relevant statutory requirements that the summons to attend the meeting (and, sometimes, the relevant notice of meeting) is provided with "specification of the business to be transacted". The procedure for giving notice is included in the Constitution and varies by meeting.

Returning to Part 4, this sets out rules for amendments to motions at section 8 (Page 3).

Amendments to motions shall be moved and seconded before they are discussed in detail and the chairman has discretion to allow more than one amendment to be discussed at the same time.

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8.7 During a debate a Member may move a "closure motion" that is, that the motion being discussed be voted upon, or that the Meeting should proceed to the next business, or that the Meeting should be adjourned.

8.8 If a "closure motion" is seconded, the chairman shall decide if the matter has been discussed sufficiently and he may then ask the Member who moved the original motion for his comments and the meeting shall then vote on the "closure motion".

In the course of debate (or even before the discussion commences) the model constitution guidance makes clear that a proposer may wish to make an alteration that they think makes the motion more acceptable to members. This is known as an alteration of motion. Equally it can be withdrawn. Both are provided for under the CDC Constitution.

Amendments are formally formal proposals to vary the terms of a motion before the latter is adopted at the meeting. The motion in its original form is then also known as an “original motion”. Amendment motions are also known as counter motions and unfortunately the two terms appear to be used interchangeably in some case law. They have to be made by a different person to the proposer.

The Constitution states at section 8.5 of Part 4 that “*Amendments to motions shall be moved and seconded before they are discussed in detail and the chairman has discretion to allow more than one amendment to be discussed at the same time.*”

Members of the Task and Finish group will be familiar with the complexity of dealing in a meeting with various amendment motions being put and only if none of the amendments are approved moving to the original motion. There are also various rules as to handling amendment motions, but also various common practices which are not formal requirements (such as dealing with amendment motions in order of submission) but these are put aside when the Chairman considers the effective management of the meeting requires it.

By their nature Amendment motions being capable of being put to the immediate meeting are not subject to identical rules about putting them prior to the meeting as the substantive item is the proposed original motion which generated the item – the timing requirements to have the motion put several days before does not apply to an amendment to that motion. If it was otherwise, then a motion put on the moment of deadline could only be debated and accepted or rejected, it could not be amended in any way.

In light of the confusion caused by the term “counter motion” in some guidance which members have seen the Monitoring Officer has asked that the term be removed from those internal documents and replaced with the more legally correct term “amendment motion”. Members are asked to bring any examples they locate to the attention of the Monitoring Officer. Unhelpfully it is still to be seen used interchangeably on various websites including official guidance websites to the model constitution (on which the CDC constitution is based).