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Westfields, Middlewich Road
Sandbach, Cheshire
CW11 1HZ

Tel: 01270 529529

email: glinys.mccready@congleton.gov.uk

DATE: 5 January 2009

OUR REF:

YOUR REF:

Dear Councillor

CABINET - TUESDAY, 6TH JANUARY, 2009

I am now able to enclose, for consideration at next Tuesday, 6th January, 2009 meeting of the Cabinet, the following reports that were unavailable when the agenda was printed.

- 5 Notice of Motion (Pages 1 - 2)**
- 8 Key Decision CE56 Criminal Records Bureau and Independent Safeguarding Authority (Pages 3 - 12)**
- 10 Cabinet Decision Making Arrangements (Pages 13 - 30)**
- 11 Local Choice Functions (Pages 31 - 36)**
- 12 Delegation of Executive Functions (Pages 37 - 50)**
- 13 Cabinet Procedure Rules (Pages 51 - 60)**

Yours sincerely

Glinys McCready
Senior Administration Officer

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Notice of motion for the meeting of the Full Council of Cheshire East Council, 9th December 2008.

PROPOSED by Councillor R Fletcher
SECONDED by Councillor D Neilson.

SUSTAINABLE COMMUNITIES ACT

That CHESHIRE EAST COUNCIL:-

(i) supports the bottom up process in the Sustainable Communities Act designed to allow local authorities and their communities to drive the help that central government gives in reversing community decline and promoting thriving, sustainable communities;

(ii) notes the Act gives local authorities the power to

- make proposals to government on the action and assistance government must take to promote sustainable communities and
- argue for a transfer of public money and function from central to local control :

(iii) notes that the Act defines the sustainable communities broadly. That definition having the 4 aspects of

- the improvement of local economy,
- protection of the environment
- promotion of social inclusion, and
- participation in civic and public activity;

(iv) notes that reasons for a local authority choosing to use the Act include gaining new assistance from government, determining that assistance, being able to argue for transfers of public monies from central to local control and involving citizens in democracy.

(v) resolves , when invited to by central government, to use the Act by preparing and submitting proposals on how central government can help; and

(vi) further resolves:-

- to inform the local media of this decision;
- to write to local MPs, informing them of this decision; and
- to write to Local Works (at Local Works, c/o Unlock Democracy, 6 Cynthia St, London N1 9JF) informing them of their resolution to use the Act.

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CHESHIRE EAST

CABINET

Date of meeting: 6 JANUARY 2009
Report of: DIRECTOR OF PEOPLE AND HR LEAD OFFICER
Title: CRIMINAL RECORDS BUREAU AND INDEPENDANT SAFEGUARDING AUTHORITY

1.0 Purpose of Report

- 1.1 To consider the implications of the Criminal records Bureau (CRB) and Independent Safeguarding Authority (ISA) requirements for the new Council and to make recommendations on the way forward.

2.0 Decision Required

- 2.1 To agree that Back Office Shared Services, if agreed by Cheshire East and Cheshire West and Chester, will manage the processes on behalf of Cheshire East.
- 2.2 To agree that candidates, employees, and Members will not be required to pay for the cost of any required
- CRB checks
 - ISA registration
- and to note the financial consequences of this decision.
- 2.3 To agree that a member of the Senior Management Team be accountable for ensuring that the Council complies with CRB and ISA requirements.
- 2.4 To require the accountable senior manager to develop the Council's approach to supporting voluntary bodies in relation to CRB and ISA and to develop the necessary policies which will be required in relation to CRB checks and ISA requirements.

3.0 Financial Implications for Transitional Costs

- 3.1 There will be some small costs incurred in 2008/09. These will be the set up costs of registering with CRB through Shared Back Office Services. This will cost approximately £11,000 for Cheshire East and will be absorbed within existing budgets, predominantly Children and Families and Adult Services.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The current estimated cost of CRB and ISA for the East for 2009/10 is £210,000, based on ISA implementation in October 2009. This would grow to £447,000 in 2010/11 onwards. However a significant proportion of this would be funded within the Dedicated Schools Grant, with the balance to be considered as part of the 2009/10 budget setting process.

5.0 Legal Implications

- 5.1 The Council will have a duty to safeguard and promote the welfare of children and vulnerable adults, and safe recruitment practises, of which the CRB and ISA have a major part to play, is a critical aspect of this.
- 5.2 There is a legal requirement to comply with the ISA and failure to do so could lead to criminal prosecution. It will be illegal to employ an unregistered person and non compliance could result in imprisonment or a fine of up to £5000. There will also be a new offence, punishable by a fine of up to £5000, for employers who fail to provide relevant information about individuals, without reasonable excuse, to the ISA as part of the new referral system.

6.0 Risk Assessment

Risk	Mitigation
Increasing risks to children and vulnerable adults	Ensure robust, risk assessed processes are in place which comply with CRB and ISA requirements.
Reputation of Council if proper practices not in place and service user is harmed	Ensure high level management accountability and monitoring of practice..

7.0 Background

- 7.1.1 Establishing safe workforces for the most vulnerable of the Council's residents is a critical governance issue and one which needs to be grasped now to ensure that good policy, procedures and practice is in place by 1 April 2009 and so that the Council is prepared to meet the ISA requirements in October 2009.
- 7.2 Events like the murder of Jessica Chapman and Holly Wells in Soham, have highlighted the importance of ensuring (as far as is possible) that people who pose a potential threat do not work with or have easy access to children and vulnerable people. This is clearly a crucial issue when recruiting staff but it also affects many non employees including bus and taxi drivers, foster parents, Councillors, student placements and families who host exchange visits, for example. It therefore impacts on all parts of the Council's services.
- 7.3 Whilst CRB and ISA are important means of delivering safer recruitment, they need to be set within an overall recruitment code of practice which delivers robust assessments of candidates.
- 7.4 It should also never be forgotten that CRB and ISA do not provide a 100% guarantee, as they will only report on people who are known risks, not those who may become a danger. There is therefore a need to ensure vigilance and that appropriate processes are in place if risks are identified after recruitment.
- 7.5 Appendix 1 summarises the CRB process and requirements, which have been in place since 2002 and which will continue once the ISA arrangements start on 12 October 2009.
- 7.6 Appendix 2 summarises the ISA process and requirements.
- 7.7 These two bodies are complementary, they have many common issues which the Council needs to address and some individual ones.

8.0 Common Issues

- 8.1 Councils can decide to ask candidates and employees to pick up the costs of the CRB fee currently £36) and the ISA registration fee (expected to be £28). It will not be possible to obtain ISA registration without a CRB check so in many cases the cost would be £64. (There will be some occasions when CRB checks are required but ISA registration is not.) In practice Councils have picked up the cost themselves rather than expecting employees and applicants to fund fees. This is mainly a recruitment incentive or perhaps more accurately a way of not seeming mean compared with other authorities. In relation to existing employees who will have to register with ISA, there would be a strong reaction from both employees and the trade unions to a proposal for individuals to meet the costs. If proceeded with some staff may refuse and the Council would then be required to dismiss them (as it would be illegal to continue to employ them in work with children and vulnerable adults). It is therefore recommended that the Council agrees to pay CRB and ISA fees itself.
- 8.2 Under current arrangements within the County Council, the Employee Service Centre currently undertakes the administration of the CRB process (and had the Council been continuing would also have picked up the administration of ISA registration). If Shared Back Office Services are agreed, it is proposed that they should continue to support this process on behalf of Cheshire East. To set up separately processes and to register Cheshire East separately to undertake CRB and ISA registration is likely to cost in the region of £135,000, plus on-going software licence fees for individual checks.
- 8.3 Many smaller third sector organisations have employees who are/will be required to have CRB checks or be ISA registered. They are not able to carry out these checks themselves but have to work through what are known as 'umbrella organisations', normally local councils who are registered with the CRB to undertake checks. If Councils do this on behalf of other organisations they are required to ensure that they have proper procedures in place which comply with CRB requirements. Cheshire East may wish to identify third sector organisations who they wish to be included in this process.
- 8.4 Experience has shown that as this is such a wide ranging issue affecting all Council Departments and employees, Members and a wide range of non employees, it is very difficult to get a co-ordinated approach to issues and that there can be a lack of overall organisational accountability. This has recently been reviewed by the Management Board of the County Council who, amongst other measures, agreed that 'the Shadow Authorities be advised of the importance of structural arrangements to cater for CRB/ISA employee and non employee matters'. It is therefore strongly recommended that a member of the senior management team is given the responsibility for the co-ordination of all matters relating to CRB and ISA. In view of the remit of the Strategic Director People to provide services to children and vulnerable adults it is proposed that the accountability should rest with him. He would need to commission work from other parts of the Council who provide services to those at risk.
- 8.5 A further difficulty relates to overseas applicants, where information is not held by British Authorities. Employers are required to make every effort to check the applicant's criminal record and obtain information from the relevant overseas authority. The CRB have provided employers with overseas contact details, but it can be problematic. Information about ISA registration in this context is awaited.

9.0 CRB Issues

- 9.1 With the merging of four authorities who are likely to have had slightly different approaches to who is CRB checked and the level of check required, it is important that the approach is harmonised for 1 April and that a risk based assessment to the need for checks is taken. A written policy about employing people with a criminal record and a security policy covering the correct handling and safekeeping of information will need to be in place as part of the CRB Code of Practice.
- 9.2 Similarly there is a need to agree the approach to portability of CRB checks from one authority to another (whether an employee has been checked by another Council needs to be re checked if appointed to Cheshire East. (NOTE – this is not an issue for any employees TUPEd across from one of the four merging Councils.)
- 9.3 There are national regulations (e.g. fostering and adoption, ContactPoint etc) and best practice issues around CRB re-checking at specified time periods. It is understood that an employer's legal duty to renew CRB checks, in some cases, will not change with the introduction of the ISA scheme. It is however, suggested that this area be reviewed to ensure a coherent approach to CRB and ISA checking in the light of the final ISA regulations when they are published.

10.0 ISA Issues

- 10.1 Implementation from October 2009 will be major exercise affecting both employees and the non employed groups. The “phasing in” arrangements for existing appointments will commence in 2010 and continue for a five year period. Clear policies, procedures and processes will need to be in place to ensure strict compliance with ISA requirements and effective service delivery.
- 10.2 ISA guidance and training will be needed for recruiting Managers, Headteachers and others involved in the process to ensure successful implementation of the scheme. Training will also be needed in relation to the new referral of information system to the ISA.
- 10.3 Members may remember that the introduction of CRB was chaotic with many checks taking months to complete with consequential problems for recruitment. Delays still happen on occasions and it is possible that the introduction of ISA registration may result in similar problems occurring. It will therefore be important that the Council has in place a clear policy on whether or not employees can work prior to confirmation of checks and if so in what circumstances. The final regulations are yet to be published, but Information on the ISA web-site currently states that employers will not be able to employ people, under supervision, while they wait for registration. This could result in difficulties in providing services if significant delays occur.

11.0 Overview of Day One, Year One and Term One issues.

- 11.1 This is a crucial issue. It is vital that proper arrangements for the protection of service users are in place by 1 April 2009 and that the Council is prepared for the inception of ISA registration in October 2009
- 11.2 The priorities are to ensure that the processes are in place to deliver, that there is clear accountability for CRB and ISA matters at a senior level, that decisions on charging have been taken and budgetary provision has been made for the consequences of that decision and that key policies/guidance is in place.

12.0 Reasons for Recommendation

- 12.1 To ensure that the Council complies with CRB and ISA requirements and safeguards the residents of East Cheshire

For further information:-

Officer: Trish Barnett

Tel No: 01244 972273

Email: tricia.barnett@cheshire.gov.uk

Background Documents:-

Documents are available for inspection at: County Hall, Chester

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CRIMINAL RECORDS BUREAU**1. BACKGROUND**

The purpose of the Criminal Records Bureau (CRB) is to help employers and voluntary organisations make safer recruitment decisions. By conducting checks (called “Disclosures”) and providing details of criminal records and other information, the CRB aims to help identify prospective candidates who may be unsuitable for certain work with vulnerable people.

2. CODE OF PRACTICE

To be able to obtain a CRB check an employer either needs to be:

- set up with the CRB as a Registered Body (*“organisations that have registered directly with the CRB to use its services”*) or
- use the services of an Umbrella Body (*“a Registered Body that provides access to the CRB to other non-registered organisations”*).

The CRB have a Code of Practice which covers, amongst other things:

- **Fair use of information** – a written policy about employing people with a criminal record should be in place, so that Disclosure information is used fairly and applicants are protected from unfair discrimination on the basis of non-relevant past convictions. At the same time vulnerable people must be protected and a safe working environment provided for employees. A criminal record should not necessarily stop an applicant obtaining a job. This is subject to particular circumstances and individual convictions that make it unlawful to make an appointment. Recruitment procedures should be based on an objective assessment of ability.
- **Handling of Disclosure information** – a written security policy covering the correct handling/safekeeping of information and the identity checking of applicants.

3. PROCESS

Disclosures are available for any person who whilst in the course of their duties are:

- in positions that involve regular contact with children or vulnerable adults: or
- employed in one of the excepted professions Offices, Employments and Regulated Occupations as listed in the Rehabilitation of Offenders Act 1974.

There are two levels of check:

- **Standard Disclosure** - available for jobs that involve regular contact with children or vulnerable adults. It reveals details of spent and unspent convictions as well as cautions, warnings, reprimands and any barring decisions.
- **Enhanced Disclosure** - reserved for those jobs that involve regularly caring for, supervising, training or being in sole charge of children or vulnerable adults. As well as the information contained in the Standard Disclosure, the Enhanced may also contain non-conviction information from local police records.

A copy of the Disclosure is sent by the CRB to the employer and the prospective employee. The recruiting Manager has access to information as part of a strictly controlled procedure.

4. REQUIREMENTS

The following policies are needed, from April 2009, as part of safe working practices, some of which are stipulated by the CRB Code of Practice:

- Employing people with a criminal conviction.
- Portability (re-use) of checks for employees and the non employed groups.
- Security of information/ID checking.
- Dealing with applicants from overseas.
- Delayed CRB checks and commencement of work.

The following decisions/actions will also need to be in place:

- Lists of jobs/roles to be subject to a check.
- Harmonisation issues (e.g. taxi drivers are subject to checks by District Councils and the County Council)
- Brief recruiting Managers and Headteacher's of any revised practical arrangements.
- Consideration of re-checking timescales for employees and non-employees, in view of ISA implementation in 2009.

INDEPENDENT SAFEGUARDING AUTHORITYVETTING AND BARRING SCHEME**1. BACKGROUND**

Following the Soham murders, Sir Michael Bichard, recommended that:

“New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with these client groups.”

The Safeguarding Vulnerable Groups Act has established, from October 2009, a new national scheme whereby every person who wants to work or volunteer with children and/or vulnerable adults will need to be assessed and registered by the new Independent Safeguarding Authority (ISA). It is estimated by the Government that around 11 million individuals will have to pass through the ISA checking process in its first five years.

2. PROCESS

Assessments will be made using data from existing barring lists; information gathered by the CRB and referred information by employers, adult/child protection teams in Local Authorities, regulatory bodies and other agencies. The ISA will also take barring decisions.

The scheme will cover paid or unpaid work in the following activities:

- **Regulated** – *“Any activity which involves contact with children or vulnerable adults. Any activity of a specified nature which involves contact with children or vulnerable adults frequently, intensively and/or overnight. Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively. Fostering and childcare. Any activity that involves people in certain defined positions of responsibility.”*
- **Controlled activities** - : *“People working for specified organisations with frequent access to sensitive records about children and vulnerable adults. Support work in adult social care settings. Frequent or intensive support work in general health settings, the NHS and further education settings.”*

In summary, the scheme will:

- prevent those who are known to present a risk from entering the workforce in the first place.
- provide for the introduction of continuous checking - when new information becomes known about an individual already registered, the ISA will review its original decision not to bar.
- be wider in scope than the current CRB system and offer complementary safeguards - CRB checks will still be needed because even though a person may be ISA registered to work with vulnerable people; they could still have a conviction which would make them unsuitable for a particular job.
- provide for consistent decision making based on a wider source of referred information.

- provide for a reduction in bureaucracy - once individuals have registered with the ISA, future employers will be able to check their status, online, and free of charge.

3. REQUIREMENTS

Local Authorities will be required to check vetted status under the new scheme before an individual can undertake regulated or controlled activities and also refer relevant information about individuals to the ISA.

The final regulations are yet to be published. However, the Government intend that ISA registration will start with new appointments and those changing jobs from 12 October 2009. The existing workforce will then be “phased in” over a five year period and details of the phasing arrangements are awaited.

Policy decisions will be needed about which jobs and roles are covered by the “regulated” and “controlled” criteria. Recruitment and selection procedures will need to be amended to incorporate ISA requirements, which will also need to be integrated with current CRB policies.

CHESHIRE EAST CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Cabinet Decision-making arrangements

1.0 Purpose of Report

- 1.1 To consider options for Cabinet arrangements for the Council from 1 April 2009

2.0 Decision Required

- 2.1 For Members to consider, and ask the Governance and Constitution Committee to make recommendations to Council, upon the:
- 2.1.1 Leadership arrangements which should apply to Cheshire East Council
- 2.1.2 Portfolios of responsibility and delegated powers of each Cabinet Member
- 2.2 That the Monitoring Officer be authorised to make such changes to the Council's emerging Constitution as he considers are necessary to give effect to the wishes of Council.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 The legal implications of the various leadership options are written into the main body of this report. However, further reports may need to be made to Members as the proposals develop, and the legal implications of those proposals will need to be given careful thought.

6.0 Risk Assessment

- 6.1 The Council's Executive Arrangements must have the appropriate checks and balances in place. Subject to these being properly incorporated in the Constitution, there are minimal associated risks.

7.0 Background and Options

- 7.1 A decision needs to be made upon whether the Council wishes to pursue a “Strong Leader” model of Executive Arrangements. This report has been prepared on that basis for illustrative purposes.
- 7.2 The “Strong” Leader Model involves the election of a Councillor as Leader by the Council and between 2 and 9 councillors appointed to the Cabinet by the Leader. The Leader would also have power to remove Cabinet Members and to determine the scope of their Portfolio responsibilities.
- 7.3 Members should note that, from May 2011, the only options which will apply will be the Strong Leader model, or for the Council to have an elected mayor.
- 7.4 In general, the functions of the Cabinet are to implement the Policy Framework of the Council and to do everything else not reserved to Council. The attached document makes suggestions as to what the Cabinet might be responsible for. It should be noted that, in a unitary authority, the volume of decisions to be made will be significant. Best practice would suggest that the functions of Cabinet Members should be clearly defined and that the range of decisions to be made by Members should be extensive. This will ensure speed of decision-making and clear accountability.
- 7.5 In law the Council has responsibility for a significant list of functions, such as planning, licensing, electoral, appointment of staff, approval of constitution etc. These functions would then be delegated to committees and sub-committees, responsible direct to Council. These matters will be subject to a separate report.
- 7.6 There are also certain “local choice” functions which may be retained by Council or delegated to the Cabinet by Council. These will be dealt with by a separate report.
- 7.7 Other than as indicated above, the Cabinet is responsible for all operational executive decisions.

8.0 Responsibilities for Functions

- 8.1 In order for Members, officers and members of the public to be clear upon where responsibilities lie for the Council's numerous unitary functions, it is important for these to be identified in some detail.
- 8.2 Appendix A contains a draft set of general responsibilities which might apply to all Cabinet Members. The document contains:
 - 8.2.1 A set of general responsibilities which apply to all Cabinet Members.
 - 8.2.2 A set of specific responsibilities which apply to individual Cabinet Members. These have been based upon and include the responsibilities already agreed by Council, and which appear in the Constitution. However, additional responsibilities have been built-in to bring further clarity to the roles of Portfolio Holders, drawing upon the Executive Arrangements of other unitary authorities.
- 8.3 Members will wish to give some detailed thought to the draft areas of responsibility prepared by officers. It is possible that some elements

might not properly reflect Cabinet Member thinking and, therefore, Appendix A may need to be changed.

- 8.4 Whilst the broad areas of responsibility of each Portfolio Holder are set out in Appendix A, a decision will need to be taken upon the level of responsibility for decisions within those areas. It has been assumed that there will be limits on decisions made. Appendix B makes some suggestions:
- 8.4.1 That certain decisions will be delegated to officers under schemes of delegation.
 - 8.4.2 That Key Decisions will fall to be taken by the Cabinet, acting collectively.
 - 8.4.3 Key Decisions as currently defined are as follows, although it has been suggested that “significance” in terms of financial matters should be accepted as being £1M or more:

The statutory definition, as contained in paragraph 8 of Part III of the Local Authorities (Cabinet Arrangements) (Access to Information) (England) Regulations 2000, is as follows:-

“an executive decision which, is likely –

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.”*

- 8.4.4 That executive strategy or policy will be recommended to Cabinet for decision.
- 8.4.5 That the Leader may require a decision to be taken by the Cabinet.
- 8.4.6 That any Cabinet Member may require a decision to be taken by the Cabinet.
- 8.5 The suggested limits in paragraph 8.4 should be carefully considered in order to ensure an appropriate balance of work between individual Members of the Cabinet and the collective Cabinet.
- 8.6 In order to complete the decision-making picture, schemes of delegation to officers will need to be prepared. The levels of delegation to officers will, of course, directly determine the amount of work which then falls to Members to decide.
- 8.7 Suggested responsibilities of the collective Cabinet are set out in Appendix C.

For further information:

Officer: Brian Reed

Tel No 01244 972205

Email: brian.reed@cheshire.gov.uk

Background Documents: None

Appendix A

Responsibilities of all Cabinet Members**Preamble**

The following are the general responsibilities which apply to all Cabinet Members, and the specific responsibilities which apply to individual Cabinet Members. These responsibilities include various functions which are delegated to each Cabinet Member to discharge.

These responsibilities and delegations form part of the Council's Executive Arrangements.

In discharging these functions, the Cabinet Member must act lawfully. This means that he or she must act within the scope of the authority that is delegated in accordance with any limits within the delegation, this Constitution, Council policies, Procedure Rules and the Members' Code of Conduct, taking advice of the Monitoring Officer and the Section 151 Officer.

There are occasions when matters affect more than one portfolio of responsibility. On such occasions, the Cabinet Members concerned shall act in conjunction with one another.

Each Cabinet Member is responsible for:-

1. The proper administration of the Council's services.
2. Ensuring adequate staffing, premises and other resources to secure agreed standards and target outcomes within the scope of their portfolio.
3. The efficient use and day to day maintenance of Council premises insofar as it relates to their portfolio.
4. Ensuring budget control and financial monitoring within the scope of their portfolio.
5. Approving use of specific grants and/or funding from non-governmental sources, and any annual delivery plans and agreements in relation to such funding.
6. The continuous improvement of the Council's services through a programme of work.
7. Liaising with the relevant Council Scrutiny Committee.
8. All decisions proposed and made within the responsibility of the Cabinet Member's portfolio.
9. The promotion of the Council's policies and communication with the public as appropriate through local and other media, ensuring always

that publications are compliant with the Council's publications, guidelines and/or any advice provided by the Borough Solicitor.

10. The promotion of the Council's existing policies.
11. Speaking up on matters of local concern and acting as the main Council spokesperson on issues within the scope of their portfolio..
12. Where permitted by the Procurement and Financial Procedure Rules, approving exemptions to those Rules in conjunction with the Borough Solicitor and Section 151 Officer.
13. Giving approval to proceed to advertisement or other method of securing competition in accordance with Procurement and Financial Procedure Rules; and for inviting and accepting tenders and quotations related to matters within their portfolio in excess of [add monetary value] and approving all specifications/tender documentation.
14. Applying for planning permission, conservation area consent, listed building consent or any other permissions or consents necessary to progress the Council's own development schemes.
15. In conjunction with the relevant officer of the Council, setting new external charges and revisiting current ones.
16. In consultation with the Leader, representing and acting as an ambassador for the Council.
17. Representing the Council's views on matters of corporate or strategic policy and any other matters which are within the scope of their portfolio.
18. Request or commissioning research and other studies on any matters of policy or service provision within the scope of their portfolio..
19. Appointing or nominating the Council's representatives on outside bodies/organisations that fall within the scope of their portfolio..
20. Taking up corporate Membership of any appropriate body or organisation whose objectives are considered to be beneficial to the pursuit of the Council's activities.
21. Taking urgent decisions on matters which fall within the scope of their portfolio..
22. Working with other Cabinet Members on matters, as directed by the Leader.
23. Ensuring appropriate consultation and liaison with partners and the community on matters within the scope of their portfolio.

24. Leading on energy savings and reduction in carbon emissions on matters within the scope of their portfolio.
25. Submitting to the Cabinet:-
- Proposals on how to agree annual budget allocations between services covered within the scope of their portfolio.
 - Recommendations in respect of strategic policy concerning matters covered within the scope of their portfolio.
 - All responses to consultation papers, relating to matters within the scope of their portfolio., issued by the Government and outside organisations
 - Annual estimates of expenditure and income in respect of services within the scope of their portfolio.
 - All policy and/or operational matters which have corporate implications or which cross the remits of other individual Cabinet Members.
26. Overseeing the timely progress of Service reviews, and adopting and reviewing Service Plans within the scope of their portfolio..

Responsibilities of Leader

- To Chair the Cabinet.
- To select the Cabinet Members and determine their Portfolios of responsibility **[this assumes “Strong Leader” model]**.
- To represent and act as ambassador for the Authority.
- To have overall responsibility for;
 - policy development and design
 - Ministerial and Members of Parliament/European Parliament liaison
 - and act as Head of Cabinet.
- To represent the Council's views on matters of corporate or strategic policy and any other matters which are within the Leader's terms of reference.
- To request or commission research and other studies on any matters of policy or service provision within these responsibilities.
- To submit to the Cabinet:
 - all policy and/or operational matters which have corporate implications or which cross the remits of the individual Cabinet Members
 - any matter which crosses the portfolio of more than one Cabinet Member, and which cannot be resolved, to the Cabinet for decision
- To prepare and publish a Forward Plan of Key Decisions.
- To present to the Council "state of the Borough" reports and to be responsible for related debates. **[Meets the objective of having debates/similar events which engage the public]**

- To consider, and forward to the Standards Committee, reports from the appropriately designated independent person(s), to investigate allegations of misconduct against the Council's Head of Paid Service and Directors **[Needs to be checked against Regulations]**
- To provide appropriate and timely Cabinet responses to Scrutiny Committee recommendations and to monitor the implementation of those responses

Responsibilities of Adult Services Portfolio Holder (and Deputy Leader)

The Deputy Leader is deputy head of the Cabinet and, as such, deputises for the Leader in respect of all the Council's affairs.

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Adult Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Reablement
- Support to Informal Carers
- Community Equipment
- Occupational Therapy
- Assistive Technology
- Mobile Meals
- Respite and Short Breaks
- Family Based Care
- Domiciliary Care
- Residential Care
- Nursing Home Care
- Extracare housing
- Supported Employment
- Sensory Impairment Services
- Safeguarding Adults
- HIV/Aids
- DAAT Services
- Domestic Violence service
- Equality in service access and delivery
- Liaison with NHS Trusts and Health authorities

- Adult Social Care
- Mental Health and Disability
- Health Promotion
- Development of Integrated Services with Health Partners
- Strategy for Responding to Health Inequalities
- Welfare Rights
- Community Legal Service

Responsibilities of Children and Family Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Children and Family Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Early Years
- Education, including:
 - School organisation and inclusion
 - Special educational needs
 - School development and improvement
 - School finance buildings (including Capital Monitoring of school project) and catering
 - Building Schools for the Future Programme
 - Maintenance and management of Children's Play Areas
- Children's social care and wellbeing
- Joint use sports and community schemes at schools;
- Youth Services
- Lifelong Learning
- Family Services
- Conway Centre
- In respect of safeguarding children to:
 - ensure that the Council gives appropriate priority to safeguarding children coherently and consistently in service planning and resource allocation
 - ensure the Council appoints an Executive Director to carry social services responsibilities and ensure that the Cabinet receives advice from him/her on all relevant matters
 - Ensure all communities are equally served in this regard.
- Liaison with NHS Trusts and Health Authorities
- Mental Health and Disability
- Health Promotion
- Development of Integrated Services with Health Partners

- Strategy for Responding to health Inequalities
- Looked-after Children
- **[Management of Connexions Service?]**

Responsibilities of Health and Wellbeing Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Health and Wellbeing Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Sport
- Archives
- Parks and Recreation
- Children's Play
- Public Health promotion
- Health improvement
- Cultural Services, including:
 - Arts
 - Events
 - Museums
 - Libraries
 - Countryside
 - Tourism

Key dependencies where lead is a different Portfolio Holder:

- Tatton Park
- Joint use sports

Typical Responsibilities of Environmental Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Environmental Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Streetscene
- Highways Operational Management including:
 - Management of Highways Register
 - Highways Design, Maintenance, Parking and Decriminalisation of Parking Enforcement
 - Street Lighting, Signals and Signing
 - Traffic Management and Road Safety
 - Civil Engineering and Transport Operations
- Climate change
- Domestic and Commercial Waste collection and Disposal
- Waste PFI
- Markets
- Bereavement services
- Health and Safety Enforcement
- Local Agenda 21
- Recycling
- Environmental cleansing and Street Cleaning
- Bulk Waste and Clearance

Key dependencies where lead is a different Portfolio Holder:

- Parks and other open space maintenance
- Contaminated land
- Public rights of way maintenance

Responsibilities of Prosperity Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Prosperity Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Strategic highways
- Local Transport Plan
- Strategic Public Transport Issues

- Economic development
- Development management
- Public and Private Sector Housing Strategy and Provision
- Homelessness
- Tourism
- Tatton Park
- Contaminated land
- Industrial and commercial activities
- New deal and other employment initiatives
- Credit Union and co-operatives development

Key dependencies where lead is a different Portfolio Holder:

- Extracare housing
- Local Development Framework

Responsibilities of Safer and Stronger Communities Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Safer and Stronger Communities Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Civil protection/ emergency planning
- Third sector and community delivery
- Youth offending team
- Crime reduction including CDRP and police/emergency services liaison
- Anti social behaviour reduction including drug abuse and domestic violence
- Community safety wardens
- CCTV
- Trading standards
- Registration services
- Licensing
- Reviewing fares and Licensing Fees
- Environmental Health
- Food safety
- Air Pollution control and monitoring
- Environmental enforcement

- Contaminated land
- Pest and Vermin Control
- Dog wardens
- Cremation and Burial Services
 - Overall responsibility for monitoring all enforcement activity
[does this conflict with Health and Safety Enforcement][see Environment Portfolio]

Key dependencies where lead is a different Portfolio Holder:

- Neighbourhood working implementation
- Domestic Violence

Responsibilities of Resources Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Resources Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Finance
- Finance service responsibility
- Construction of annual budget
- Treasury Management
- Capital Programme
- Revenues and Exchequer functions, including Benefits
- Revenues and benefits
- HR Strategy
- Transactional HR
- Liaison with employees, organisations and unions
- Organisational Development
- Employee training and development
- Occupational Health
- Corporate Health and safety
- Legal and Democratic Services
- Civic matters
- Electoral Services
- Member Training and Development
- ICT, including internet and ICT monitoring

To submit to the Cabinet:

- proposals on how to agree annual budget allocations between services;
- annual estimates of expenditure and income ;
- proposals on how to agree annual budget allocations between services covered by these terms of reference;
- annual estimates of expenditure and income in respect of services covered by these terms of reference.

In respect of the Council's budget and Council Tax:

- to make recommendations for the proper administration of the Authority's financial affairs;
- to consider the Authority's revenue and capital estimates and to make recommendations on the levels of Council Tax for submission to the Council;
- to consider and make recommendations annually to the Council on the calculation of the Council Tax base.

To consider and make recommendations to Council in respect of the final accounts and balance sheets of the Council and the Annual Reports on the accounts prepared by the relevant officers.

Key dependencies where lead is a different Portfolio Holder:

- Audit

Responsibilities of Procurement, Assets and Shared Services Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Procurement, Assets and Shared Services Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Property services including county farms
- Corporate Landlord function in respect of all Council property
- Council Property functions including:
 - Council land policy, usage, sales, valuations
 - Markets and vending facilities
 - Facilities management and the allocation of office space.
 - Architectural and design services
 - The Council's conference facilities and allied establishments
 - Security of Council buildings
 - Accessibility within Council buildings

- Cheshire Business Services
- Pensions
- Procurement including subregional hub
- External funding
- European Unit
- Shared services and delivery models
- Procurement and Contract Monitoring of External Providers
- Resource Procurement, SRB, European and Lottery Funding

Key dependencies where lead is a different Portfolio Holder:

- PFI procurement
- E-procurement

Responsibilities of Performance and Capacity Portfolio Holder

The Portfolio Holder is responsible for all matters relating to the Council's affairs in respect of the Performance and Capacity Portfolio and is responsible for liaising with other Members of the Cabinet, particularly where those matters affect other aspects of Council business or the Borough.

In particular, the Portfolio Holder has individual responsibility to make all **[this needs to be qualified by exclusion of those decisions made by officers]** decisions in respect of the following matters:

- Performance Management and Transformation
- Research and Intelligence
- Customer Access/Services
- Community Plan/Community Strategy
- Third sector and community development
- Local Strategic partnership
- Corporate Plan
- LDS
- Area and neighbourhood working
- Communications, market research and public opinion surveys
- Consultation
- Audit
- Risk management and insurance
- Equality and diversity
- Oversee the Comprehensive Performance Assessment
- The Council's work in respect of the Local Strategic Partnership
- Policy Unit

- Customer Complaints and Responses
- Marketing and Publicity
- Printing and Design
- Business Planning
- Major Policy Development

To submit to the Cabinet:

- recommendations in respect of strategic policy for the Council
- recommendations in respect of the Council's Corporate Plan
- all responses to consultation papers, relating to these terms of reference, issued by the Government and outside organisations
- recommendations in respect of strategic policy concerning matters covered by these terms of reference

Key dependencies where lead is a different Portfolio Holder:

- Organisational development
 - External Funding/European Unit
-

Appendix B

DRAFT OUTLINE FOR DECISION MAKING INDIVIDUAL CABINET MEMBERS

Individual Cabinet Members are empowered to make all executive decisions in respect of their own portfolio area of responsibility **except**

- Those decisions delegated to an officer (unless the officer refers the decision to the executive member)
- Where the decision is a Key Decision as defined in this Constitution.
- A decision or recommendation on strategy or policy
- A decision that is a departure from any agreed Corporate objective or the approved Budget
- Where the Leader (before a decision has been taken) requires the decision to be taken collectively by the Cabinet
- A decision which any Cabinet Member has asked to be taken collectively by the Cabinet

The decisions must be made in discussion with one or more of the following as appropriate:

- Chief Executive
- Appropriate Director or Head of Service
- Monitoring Officer
- Chief Finance Officer
- Where there are minor cross-cutting implications - other appropriate Portfolio Holder(s)

The Executive Member must take into account professional, legal and financial implications.

If any of the above officers give advice that the decision would fall within one of the exceptions above then it shall be a decision for the Cabinet acting collectively.

Where it is not clear in which Portfolio an issue sits, the Leader shall decide.

Decisions must be recorded on a form, countersigned by one of the above officers that professional advice has been given and that legal and financial implications have been made known. In the case of key decisions the reasons for the decision must be identified. The advising officer must keep a record of the decisions he/she has countersigned and a copy of the form sent to the Democratic Services team. The decision will be published electronically and members may exercise call-in in the same manner as for a full executive decision.

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CHESHIRE EAST

CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Local Choice Functions

1.0 Purpose of Report

- 1.1 To consider options for delivering “local choice functions” from 1 April 2009

2.0 Decision Required

- 2.1 That the Governance and Constitution Committee to be asked to make recommendations to Council as to the allocation of local choice functions between Council and the Cabinet and further delegations to committees and officers.

3.0 Financial Implications for Transition Costs

- 3.1 None.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The discharge of functions by officers can be more cost effective than discharge by committees with the associated publicity and servicing requirements cost centres.

5.0 Legal Implications

- 5.1 In order to reduce the scope for challenging decisions taken by the Authority it is vital to ensure that the constitution clearly sets out how the range of local choice functions are to be delivered.

6.0 Risk Assessment

- 6.1 The central risk surrounding the allocation of local choice functions is challenge arising from a lack of clarity for responsibility for the same. Any other relevant risks are dealt with in the body of this report.

7.0 Background

- 7.1 S13 of the Local Government Act 2000 makes provision for determining which functions of a local authority are to be the responsibility of the executive under

executive arrangements. The following approach has been adopted by the Secretary of State:-

- 7.1.1 determination of the local authority's policy of framework and budget and other constitutional and quasi-legislative functions are to be the responsibility of the Council.
- 7.1.2 functions which involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a person together with any related enforcement actions are not to be the responsibility of the Executive.
- 7.1.3 all other functions are to be the responsibility of the Executive.
- 7.2 In addition to these overarching principals, The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 set out lists of specific functions of a local authority that:-
 - 7.2.1 shall not be the responsibility of the Executive
 - 7.2.2 may (but need not) be the responsibility of a the Executive ("local choice functions")
 - 7.2.3 shall not be the sole responsibility of a local authority's Executive.
- 7.3 In respect of the local choice functions a local authority's executive arrangements must set out whether each function either:-
 - 7.3.1 is not the responsibility of the Executive
 - 7.3.2 is the responsibility of the Executive; or
 - 7.3.3 is or is not the responsibility of the Executive to a specified extent.
- 7.4 Any delegation of local choice functions to a committee of the Council or Executive or to an officer must also be clearly documented.

8.0 Options

- 8.1 Members are referred to the Appendix to this report where a list of functions is presented in tabular form along with suggestions as to whether the function should be classed as a Council or an Executive function. The table also contains suggested delegations to committees and/or officers.
- 8.2 The suggestions as divisions between Council and Executive are based statutory guidance issued under s38 of the Local Government

Act 2000.¹ Suggestions in relation to delegations are based upon on local and national best practice.

- 8.3 The statutory guidance requires that the approach of the Secretary of State (paragraph 7.1 above) should be followed when determining how to deliver local choice functions.
- 8.4 Notwithstanding that some functions are classified as local choice functions, requirements of the regulations and statutory guidance result in a situation where certain functions are better suited to delivery by the Executive.
- 8.5 For example, matters involving the determination of appeals against decisions of the authority may result in the undertaking of function of the nature of those listed at 7.1.2 and so be better suited to discharge by the council (or a committee thereof).
- 8.6 It should also be noted that it is anticipated that there will be a further cascading of responsibilities where appropriate by internal schemes of delegation from directorial/service head level to subordinate officers.
- 8.7 In respect of appointments to outside bodies, it is understood that a list of such bodies is currently being prepared identifying those bodies to which appointments are to be made by cabinet and those to which appointments will be made by Council through the Governance and Constitution Committee.

For further information:

Officer: Daniel Dickinson

Tel No 01244 972756

Email: daniel.dickinson@cheshire.gov.uk

Background Documents: None

¹ DETR New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities.

SECTION 1: RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

Local Choice Functions²	Decision Making Body	Delegation of functions to Committees or officers (to the extent set out below or in Section {} for Council (non-executive) functions and section {} for executive functions)
Functions under a local Act (other than one specified or referred to in Reg 2 or Schedule 1 of the Regulations 2000)	Cabinet	The relevant Director for the function concerned.
To determine appeals ³ against any decision of the authority.	Full Council	Appeals Panel insofar as not delegated to any other committee, excluding employee appeals delegated to the relevant Director concerned
To appoint review boards under the Social Security Act 1998 ⁵	Full Council	Appeals Panel (probably cascaded to officers)
To make arrangements for appeals against exclusion of pupils from maintained schools	Full Council	Appeals Panel
To make arrangements for appeals regarding school admissions ⁶	Full Council	Appeals Panel
To make arrangements for appeals by governing bodies ⁷	Full Council	Appeals Panel
To make arrangements to enable questions to be put at Council meetings on the discharge of the functions of a police authority ⁸	Full Council	Strategic Director Policy and Resources
To appoint Members to police authorities ⁹	Full Council	

² Local Authorities (Functions and Responsibilities) Regulations 2000, Schedule 2

³ Including appeals in relation to access to information by Members under s100F Local Government Act 1972, Regulation 17 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, and the common law “need to know” rules

⁵ s34(4) Social Security Act 1998

⁶ s94(1), (1A) and (4) School Standards and Framework Act 1998

⁷ s95(2) School Standards and Framework Act 1998

⁸ s20 Police Act 1996

⁹ Paragraphs 2 to 4 of Schedule 2 Police Act 1996

Local Choice Functions¹	Decision Making Body	Delegation of functions to Committees or officers (to the extent set out below or Section 2C for Council (non-executive) functions and section 3D for executive functions)
Any function relating to contaminated land ¹¹	Cabinet	Strategic Director Places
The control of pollution or the management of air quality ¹²	Cabinet	Strategic Director Places
To serve an abatement notice in respect of a statutory nuisance ¹³	Cabinet	Strategic Director Places
To pass a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area ¹⁴	Full Council	
To inspect the authority's area to detect any statutory nuisance ¹⁵	Full Council	Strategic Director Places
To investigate any complaint about the existence of a statutory nuisance ¹⁶	Full Council	Strategic Director Places
To obtain information about interests in land ¹⁷	Full Council	Planning Committee and Strategic Director Places and Head of Planning and Policy
To obtain particulars of persons interested in land ¹⁸	Full Council	All Strategic Directors in pursuance of their delegated authority

¹¹ Part IIA Environmental Protection Act 1990 and subordinate legislation

¹² Pollution Prevention and Control Act 1999; Part IV Environment Act 1995; Part I Environmental Protection Act 1990; Clean Air Act 1993

¹³ s80(I) Environmental Protection Act 1990

¹⁴ s8 Noise and Statutory Nuisance Act 1993

¹⁵ s79 Environmental Protection Act 1990

¹⁶ s79 Environmental Protection Act 1990

¹⁷ s330 Town and Country Planning Act 1990

¹⁸ s16 Local Government (Miscellaneous Provisions) Act 1976

Local Choice Functions¹	Decision Making Body	Delegation of functions to Committees or officers (to the extent set out below or Section 2C for Council (non-executive) functions and section 3D for executive functions)
To make arrangements for the execution of highways works ¹⁹	Cabinet	Strategic Director Places and Head of Environmental Services ⁴
To appoint any individual (a) to any office other than an office in which he is employed by the authority (b) to any body other than – (i) the authority; (ii) a joint Committee of two or more authorities; or (c) to any Committee or sub Committee of such a body and to revoke any such appointment	Cabinet in respect of organisations listed at {} below and the Full Council in respect of other organisations	In respect of appointments by Full Council delegated to the Governance and Constitution Committee.
To make agreements with other local authorities for the placing of staff at the disposal of those other authorities	Cabinet	Strategic Directors
Functions relating to local area agreements ⁵	Cabinet	

¹⁹ s278 Highways Act 1980

⁴ Upon terms acceptable to the Borough Solicitor

⁵ Sections 106,110,111 and 113 of the Local Government and Public Involvement in Health Act 2007

CHESHIRE EAST

CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Delegation of Executive Functions

1.0 Purpose of Report

- 1.1 To consider options for delegating and recording the delegation of executive functions from 1 April 2009.

2.0 Decision Required

- 2.1 That the Governance and Constitution Committee recommend to Council:

2.1.1 that the approach set out in the Appendix to this report be adopted as part of Cheshire East's Executive Arrangements and be reflected in the Council's Constitution to take effect from 1st April 2009;

2.1.2 that the Monitoring Officer be authorised to determine the remaining detail of the Appendix in consultation with the Leader and appropriate Cabinet Members and to make such amendments to the Council's emerging Constitution as he considers are necessary to give effect to the decision of Council.

3.0 Financial Implications for Transition Costs

- 3.1 None.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The discharge of functions by officers can be more cost effective than discharge by committees with the associated publicity and servicing requirements cost centres.

5.0 Legal Implications

- 5.1 In order to reduce the scope for challenging decisions taken by the authority it is vital to ensure that the constitution clearly sets out how executive functions are to be delegated.

6.0 Risk Assessment

- 6.1 In addition to the legal implications set out above, the Cabinet must strike an effective balance in functions that it retains for itself and those that it chooses to

delegate in order to ensure the effective and efficient day to day operation of the business of the authority.

7.0 Background – Local Authority Constitutions

- 7.1 English local authority constitutions are based on the Modular Constitution¹ promulgated by the then DETR upon the introduction of executive arrangements pursuant to the Local Government Act 2000. Part 3 of the constitution sets out which organs of the Authority are responsible for exercising its various powers and functions.
- 7.2 A definition of what constitutes executive functions is set out in section 3 of the attached draft Part 3. With some provisos which are detailed in that section, executive functions include:-
- “... those local choice functions identified in Section 1 as the responsibility of the Executive and all other functions of the Authority not specified in Section 2.”*
- 7.3 Executive functions are framed in this manner by regulations made under the 2000 Act². In brief, the regulations provide that determination of the local authority's policy of framework and budget and other constitutional and quasi-legislative functions, in addition to functions which involve determining applications for a licence, approval, consent, permission or registration or direct regulation of a person together with any related enforcement actions are not to be the responsibility of the executive (so rest with the Council). All other functions are to be the responsibility of the executive.
- 7.4 In terms of delegation to officers this effectively represents the powers required to ensure the day to day operation of the Council. Accordingly, a considerable range and degree of powers is required to be delegated and primarily two different approaches emerge from an examination of English local authority constitutions.
- 7.5 The first is an exhaustive approach to listing functions which officers have the delegated authority to carry out. Whilst there is merit in this approach in terms of precision and producing a comprehensive reference tool for decision makers, this approach can result in a document that lacks clarity and accessibility and in following a prescriptive approach care needs to be taken to ensure that no functions are missed.
- 7.6 The second approach is to affect a wide ranging general delegation of power subject to limitations in the terms of the delegation based on the nature of the decision and/or constrained by the application of a suite of council policies, procedures and codes of practice in different subject areas. This approach can lead to greater clarity for those consulting the constitution to get an understanding of how the local authority operates as well as providing officers

¹ DETR New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities.

² The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

with the flexibility and authority required to transact the business of the authority. There is less scope for required delegations to be overlooked in this approach whilst appropriate checks and balances are built into the system by way of the limitations on the exercise of delegated powers discussed above.

8.0 Proposals

- 8.1 The second approach is suggested for Cheshire East Council. In the attached working draft, parameters for officer decision making of general application are set out and then wide provision is made to accommodate the requirements of day to day business. Next, more bespoke, where required, provision is made for Service specific business needs which will be fleshed out as the initial attached draft is progressed.
- 8.2 The approach taken in terms of drafting style is intended to provide the reader with clarity and accessibility in terms of ascertaining responsibility for functions based on service areas rather than the type of function in question. As a result the full range of functions is covered in each service area. Those functions which are local choice/full council functions, which are the subject of separate reports, are clearly identified with provisions as to their delegation in the other sections of Part 3 of the constitution.
- 8.3 Members are reminded that the attached draft Part 3 is in an early form and will be refined, expanded and restructured as necessary once supporting policies are developed and approved and once second and third tier management posts, post holders and their responsibilities crystallise. Work continues to populate the remaining headings in the attachment.

For further information:

Officer: Daniel Dickinson

Tel No 01244 972756

Email: daniel.dickinson@cheshire.gov.uk

Background Documents:

DETR New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities (24 January 2000). <http://www.communities.gov.uk/publications/localgovernment/modularconstitutions>

Appendix

SECTION 3{ X }: POWERS OF OFFICERS**1 GENERAL ROLES AND RESPONSIBILITIES OF OFFICERS AND MEMBERS**

- 1.1** Members set policy priorities and strategies to reflect local interests and needs and are also responsible for allocating funding between individual priority areas. The Chief Executive, Strategic Directors, Heads of Service and their staff implement these strategies and policies by delivering services and major initiatives. It is officers therefore, who have responsibility for managing the Council's day to day operations, within a policy and budgetary framework laid down by Members.
- 1.2** Under the executive arrangements, both full Council and the Cabinet have specific functions and these can be delegated to committees or officers. Where Council or the Cabinet have established a committee to discharge their respective functions then subject to any limitations imposed by the Council/Cabinet respectively, that committee can also delegate its functions to officers.
- 1.3** The following scheme of delegation captures a full range of executive and full council functions by Service area. A definition of what constitutes an executive function is set out below. The majority of the functions set out in this section are executive functions delegated to officers by the Cabinet. Details of the functions that are delegated to officers by full Council and its committees can be found in Sections 1 and 2 of Part 3 of the Constitution.
- 2.0 EXECUTIVE FUNCTIONS**
- 2.1** Executive functions include those local choice functions identified in Section 1 as the responsibility of the Executive, and all other functions of the Authority not specified in Section 2.

However, in accordance with the functions Regulations³, the following are NOT functions of the Executive:

- 2.1.1** imposing conditions, limitations or restrictions on approvals, licences, permissions or registrations on a non-executive function;
- 2.1.2** determining any terms that any such approval etc. is subject to⁴;
- 2.1.3** determining whether and how to enforce any failure to comply with such approvals or any of the attached conditions etc.⁵;
- 2.1.4** amending, modifying, varying or revoking any such approval⁶;
- 2.1.5** determining whether a charge should be made for such approvals or the amount of such charge⁷;
- 2.1.6** making, amending, revoking or replacing the Members Allowance Scheme or determining any amounts or rates in the scheme⁸;
- 2.1.7** electoral arrangements⁹;
- 2.1.8** governance arrangements¹⁰;
- 2.1.9** community governance reviews¹¹;
- 2.1.10** subject to any Regulations under S20 of the Local Government Act 2000, making arrangements for the joint exercise of functions under S101(5) of the Local Government Act 1972 and making appointments to committees/joint committees under S.102 of the 1972 Act¹²;
- 2.1.11** any functions reserved to full Council under legislation which pre-dates the Regulations¹³;
- 2.1.12** amending, modifying, varying or revoking any plan or strategy unless it is required to give effective to the requirements of the

³ The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI2000/2853

⁴ Reg. 2(2)

⁵ Reg. 2(3)

⁶ Reg. 2(4)

⁷ Reg. 2(6)

⁸ Reg. 2(5) and 2 (6)

⁹ Reg 2(6A and B)

¹⁰ Reg2(6Ca) -c),Da) and b), and F)

¹¹ Reg2(6E)

¹² Reg. 2(8)

¹³ Reg. 2(11)

Secretary of State or Minister submitted for approval or where full Council when approving the plan/strategy authorised the Executive to do so¹⁴;

- 2.1.13** the adoption/approval of a plan/strategy which is not in the policy framework, if full Council has determined that full Council should take the decision¹⁵; an where the decision is contrary to or not wholly in accordance with the Budget and Policy Framework¹⁶;

3.0 POWERS OF OFFICERS

- 3.1** The Chief Executive, Strategic Directors, Heads of Service, Chief Finance Officer, Borough Solicitor/Monitoring Officer and Borough Secretary or their nominated representatives are entitled to be notified and represented at all meetings of the Council, the Cabinet collectively or individually (including any Committees or Sub-Committees of the Executive), Committees, Sub-Committees, Special Committees, Panels, Boards or other similarly constituted bodies including briefing meetings and to be consulted in advance on all reports and items of business being submitted to Members.
- 3.2** The fact that an executive function is delegated to an officer under these arrangements does not preclude the Cabinet from exercising the function directly. The Cabinet may determine to reserve decisions about particular matters to itself. In addition, the relevant Cabinet portfolio holder or Leader of the Cabinet may request that an officer refrains from exercising a delegated authority in respect of a particular matter with the effect that the matter is taken back to the Cabinet for a decision instead.
- 3.3** In addition to the delegations set out in this scheme, the Cabinet can arrange for bespoke delegations on specific matters.
- 3.4** In some circumstances an officer may consider a matter to be of such importance that their delegated authority should not be exercised. In these circumstances the officer may refer the matter back to the Cabinet for determination.
- 3.5** Each officer has power to act under this section in relation to the budgets, resources and policies which are within their areas of responsibility.

¹⁴ Reg. 4

¹⁵ Reg. 5(1)

¹⁶ Reg. 5(1)

- 3.6** Officers with delegated powers under this scheme may, subject to any limitations imposed in the terms of the delegation to them, delegate further to other officers. Every such sub-delegation shall be recorded in writing within internal Service schemes of delegations. The sub-delegation of functions shall not in any way diminish the overall responsibility and accountability of the delegator.
- 3.7** The provisions of paragraphs 3.2 and 3.4 above apply to sub-delegations between officers as they do to delegations from Cabinet to Officers.
- 3.8** Officers shall devolve responsibility for service delivery and management to the nearest practicable point to the service user.
- 3.9** Before taking decisions, Officers are under a duty to satisfy themselves that they have the duly delegated power to do so and that they have undertaken any appropriate consultation with Chief Officers¹⁷ where the matter in question involves professional or technical considerations that are not within the officer's sphere of competence. Officers are under a duty to ensure that they take decisions in accordance with:-
- 3.9.1** professional standards
 - 3.9.2** statutory powers, guidance and Codes of Practice
 - 3.9.3** this Constitution
 - 3.9.4** the approved budget and policy framework including contract and financial procedure rules
 - 3.9.5** any other approved policies, procedures and practices.
- 3.10** This section does not delegate to officers:-
- 3.10.1** any other approved policies, procedures and practices
 - 3.10.2** any matter reserved by law or by this Constitution to the Council or to any committee or sub-committee of the Council
 - 3.10.3** any matter in respect of which specific provision is made elsewhere in this constitution
 - 3.10.4** any matter which in law may not be delegated to an officer

¹⁷ A definitions section to be inserted:- includes Head of Paid Service, Solicitor/monitoring officer, S151 Officer etc....

3.10.5 any Key Decision other than those in respect of which the Cabinet has made specific provision for delegation to officers

3.11 Any executive decision made under this scheme of delegation may be called-in in accordance with the provisions of paragraph {X} of the {Executive/Scrutiny} Procedure Rules

4 DELEGATIONS TO OFFICERS – GENERAL

4.1 The Chief Executive, Strategic Directors, Heads of Service and other named officers¹⁸ (or officers duly authorised by them to act on their behalf) have the power to take all actions necessary to carry into effect without reference to the Cabinet or to any of its committees, matters of day to day management and administration of the Council's affairs. In particular, and without prejudice to the generality of this clause, this power includes the following functions:-

4.2 FINANCIAL

Generally

4.2.1 Directors are responsible for financial management within their departments. They shall manage the development of budget policy options with a detailed assessment of financial implications within the budget process and resource framework agreed by the Council.

4.2.2 Directors shall establish, operate and keep under review schemes of internal delegation in consultation with the [CFO?] to ensure that:-

4.2.2.1 day to day financial management within their services is carried out in a secure, efficient and effective manner and in accordance with Financial Procedure Rules and Codes of Practice on Financial Management.

4.2.2.2 budgetary problems are contained wherever possible within the Department and if necessary seek specific in year approval for the transfer of resources between budgets.

4.2.2.3 Reports are made to the appropriate bodies on the management of resources and performance against targets set out in the service business plan

¹⁸ This provision enables particular Heads of Service or other officers to be identified as benefiting from these general delegations concurrent with Directors etc and such officers/posts need to be listed elsewhere in the constitution and referred to in this footnote.

- 4.2.2.4** risks are appropriately assessed, reviewed and managed
- 4.2.2.5** to ensure all members of staff are fully trained, aware and comply with the requirements of the Financial Procedure Rules, the Code of Practice on Financial Management and the Contract Procedure Rules.
- 4.2.2.6** to ensure that all allegations of suspected fraud, corruption and financial irregularity are promptly reported to the Chief Finance Officer and that any local investigations are undertaken thoroughly, consistently and impartially.
- 4.2.2.7** Following approval of departmental, scheme or project specific budgets, to incur revenue and capital expenditure within those budgets and in accordance with the Financial Procedure Rules, Contract Procedure Rules, Codes of Practice and internal service schemes of delegation.

Bad Debts

- 4.2.3** To write off debts (other than local taxation) in accordance with the procedures and maximum values set out in Financial Procedure Rules.

Payments in Advance

- 4.2.4** To approve payments to suppliers prior to the receipt of goods¹⁹ in accordance with the limits set out in Financial Procedure Rules.

Cash Imprests Accounts

- 4.2.5** To authorise the establishment of individual cash imprests accounts in accordance with the limits set out in Financial Procedure Rules.
- 4.2.6** To approve individual payments from cash imprests accounts in excess of the limit set out in Financial Procedure Rules.

4.3 PERSONNEL

General

- 4.3.1** To deal with the full range of employment and staff management issues (particularly in relation to appointments, discipline,

¹⁹ In exceptional circumstances – Financial Procedure Rule [?]

performance, grievance, grading, sick pay, leave, equal opportunities and health and safety) in accordance with the Authority's policies and procedures {list or refer to list of internal/external policies/procedures?}).

Changes to Staffing Structures

4.3.2 To agree changes to staffing structures except where the restructure:

4.3.2.1 involves the loss of one or more posts not currently vacant

4.3.2.2 involves the regrading of posts or the grading of new posts

4.3.2.3 involves changes to existing National or Local Agreements and policies

4.3.2.4 cannot be achieved within delegated powers in respect of budgets

4.3.3 Decisions are subject to the prior notification of the Head of Human Resources and Organisational Development and prior consultation with all appropriate parties affected by the decision, notably the Trade Unions.

4.3.4 Decisions in respect of restructures which do not fall within 4.3.2 above are delegated to the Head of Human Resources and Organisational Development subject to consultation with the relevant Strategic Director, Head of Service and other appropriate parties.

4.3.5 Proposals which involve additional Council expenditure outside officer delegations or which involve issues outside existing Council policy will be referred to the Council or appropriate committee.

4.4 LAND AND BUILDINGS

4.4.1 In the following cases, acquiring of interests in and rights over land or premises on terms negotiated and recommended by the { } Officer, subject to there being sufficient budgetary provision and in accordance with the Finance and Contract Procedure Rules:-

4.4.1.1 for freehold acquisitions or single payment in return for the grant of an easement or other rights in or over land

and premises, the consideration being not more than £{ }, or

4.4.1.2 leases, licences, tenancies and other arrangements of a periodic nature, the annual payment being not more than £{X} and the term not being longer than { } years;

4.4.1.3 easements, the annual payment being not more than £{X}, or the total consideration being not more than £{X} where the grant is in consideration of a single payment.

4.4.2 Approving the occasional use of land and premises, by outside bodies and third parties and the charges to be made.

4.4.3 Granting of wayleaves, easements and licences on terms recommended by the {X}.

4.5 OFFICER AUTHORISATION AND COMPLAINEE MATTERS

Notices, Requisitions for Information, and Legal Proceedings

4.5.1 With the approval of the Borough Solicitor:-

4.5.1.1 to serve or authorise the service of requisitions for information²⁰, any notice, order, or direction

4.5.1.2 to approve or issue any licence or regulations which may be required or authorised by or under any legislation or byelaws.

4.5.1.3 Subject to the approval of the Borough Solicitor to authorise legal proceedings

Certification of Contracts - Local Government (Contracts) Act 1997

4.5.2 Subject to the approval of the Borough Solicitor, to sign certificates for contracts which relate functions in their area of responsibility.

Authorising Officers

4.5.3 To authorise officers possessing such qualifications as may be required by law or in accordance with the Council's policy, to take samples, carry out inspections or surveys, enter land and

²⁰ in respect of particulars of persons with an interest in land or premises – insert statutory references

premises and generally perform the functions of a duly authorised officer of the Council (however described) and to issue any necessary certificates of authority.

Data Protection, Human Rights, Surveillance Activities, Freedom Of Information

4.5.4 To implement and ensure compliance with:

4.5.4.1 the rules on data protection, human rights, surveillance activities, and freedom of information²¹;

4.5.4.2 the Council's policies on these matters; and

4.5.4.3 guidance and advice from the Borough Solicitor.

4.5.5 To designate officers with specific responsibilities for these matters.

4.5.6 To advise the {Information Controller} of any new types of data processed, of new ways of processing personal data and of any new persons or organisations to whom data is given.

4.6 GENERAL

Disposal of Property

4.6.1 Authorising the write-off, loss or the disposal of obsolete or surplus vehicles, plant, equipment, machinery, stores and materials in accordance with Financial Procedure Rules.

Stores Deficiencies and Surpluses

4.6.2 To authorise the making good or otherwise of stores deficiencies up to the limit specified in Financial Procedure Rules.

Lost Property

4.6.3 To take responsibility, as identified in the Financial Procedure Rules for lost property found on Council premises, including the registration of found items and the designation of a responsible officer to follow the found property procedures.

Management of Land, Premises, Vehicles and Equipment

²¹ Contained within the following: Data Protection Act 1998, Human Rights Act 1998, Freedom of Information Act 2000 and the Regulation of Investigatory Powers Act 2000 and subsidiary legislation

4.6.4 Subject to corporate or centralised arrangements, to manage all land, premises, vehicles, plant, equipment, machinery, stock, supplies, materials, furniture, appliances, and uniforms necessary for the provision of the services for which they are responsible including arrangements for cleaning, maintenance, hire and letting.

Local Choice Functions

4.6.5 To undertake the Local Choice Functions²² duly delegated to them and within their area of responsibility.

Safeguarding Children

4.6.6 To ensure that arrangements are in place to discharge the responsibilities of the Department in respect of the need to safeguard and promote the welfare of children as required under Section 11 of the Children Act 2004.

Etc...

5 POWERS OF SPECIFIC OFFICERS

5.1 Chief Executive

5.2 Strategic Director Places

5.3 Strategic Director People

5.4 Borough Treasurer and Head of Assets

5.5 Borough Solicitor and Monitoring Officer

5.6 Head of Human Resources and Organisational Development

5.7 Head of Policy and Performance

5.8 Head or Service for Children and Families

5.9 Head of Service for Adults

5.10 Head of Health and Wellbeing Services

5.11 Head of Transformation

5.12 Head of Environmental Services

5.13 Head of Safer and Stronger Communities

²² See Section 1, Part 3 of the Constitution

5.14 Head of Planning and Policy

5.15 Head of Regeneration

CHESHIRE EAST

CABINET

Date of meeting: 6th January 2009
Report of: Monitoring Officer
Title: Cabinet Procedure Rules

Purpose of Report

- 1.1 For Cabinet to make recommendations to the Governance and Constitution Committee upon the Cabinet Procedure Rules which will apply with effect from 1st April 2009.

2.0 Decision Required

- 2.1 That, having considered the issues raised in this report, the Governance and Constitution Committee be asked to recommend to Council that the Cabinet Procedure Rules appended to this report should be adopted and should take effect on 1st April 2009.
- 2.2 That Cabinet's recommendations should include its views upon the issues highlighted in Appendix A.

3.0 Financial Implications for Transition Costs

- 3.1 There are no implications for Transition Costs.

4.0 Financial Implications 2009/10 and beyond

- 4.1 There are no financial implications 2009/10 and beyond.

5.0 Legal Implications

- 5.1 The legal implications are taken into account in the body of this report.

6.0 Risk Assessment

- 6.1 As the recommended model of Procedure Rules largely follows the Modular Constitution format prepared by the Government Department, taking on board tried and tested provisions of Rules in use across Cheshire, no identifiable risks arise.

7.0 Background

- 7.1 The Council has adopted a Constitution, including Procedure Rules, which govern the way in which its Council meetings, Committees, Sub-Committees and Cabinet operate during the Shadow Council period.
- 7.2 These are currently in use and, with the exception of a small number of changes which have been considered by Members, have served the Council well.
- 7.3 Whilst the existing Constitution has been in operation since the Shadow Council came into being, this was prepared to serve the needs of the limited functions for which it was responsible. However, the Council will need to adopt a Constitution which will take effect on 1st April 2009 and which will serve the purposes of a unitary local authority.
- 7.4 The adoption of a new Constitution is therefore an opportunity for Members to consider whether the current Cabinet Procedure Rules contain satisfactory provisions.
- 7.5 Attached to this report as Appendix B are the current Rules, containing minor amendments eg removal of references to "Shadow Council" and "Interim Monitoring Officer".
- 7.6 Appendix A is a schedule of key issues identified by officers by way of a reminder of key provisions of the Rules.

8.0 Conclusions and Recommendation

- 8.1 Cabinet is asked to give consideration to the issues raised in the schedule at Appendix A and to provide direction upon the provisions which should be included in the Rules which will form part of the Constitution from 1st April 2009.

For further information:

Officer: Brian Reed
Tel No: 01244 972205
Email: brian.reed@cheshire.gov.uk

Background Documents:

- ***Cheshire East Shadow Council Constitution***
- ***Government Department Modular Constitution***
- Cheshire local authorities' constitutions

Appendix A

Page/ref	Issue	Comment
Pg 5 / R1	Strong Leader/Council Leader model of Executive Arrangements	The Council must decide whether to adopt a “Strong Leader” or “Council-led” model of Executive Arrangements. The Strong Leader model empowers the Leader to appoint Cabinet members, determine their responsibilities and decision-making powers. The Leader is appointed by Council. Under the Council-led model, Council appoints all Cabinet Members and determine their decision-making powers. The drafting of Rule 1 contains optional provisions.
Pg 6 / R2.3	Task/advisory groups	The Cabinet may appoint such Groups, whose membership may be from within the Council, or drawn from outside of the Council
Pg 7 / R4	Cabinet meetings	If individual Cabinet Members are empowered to make decisions, it must be decide whether they will do so in public meetings, subject to the statutory requirement that all Key Decisions must be made in public.
Pg 7 / R5	Quorum	The current 50% of Cabinet Membership is required for meetings to be quorate. The minimum is 25%.
Pg 7 / R7	Member speaking at Cabinet meetings	Apart from Chairmen and Spokespersons of scrutiny committees (who may attend Cabinet meetings, and speak on any agenda item) any Member of the Council may, with the agreement of the Leader, attend and speak.
Pg 8 / R8.9	Cabinet agenda items	Any Member of the Council may make a request to the Leader that an item be included on the agenda of a meeting
Pg 9 / R 8.13	Public speaking at Cabinet meetings	10 minutes are allowed for members of the public to speak on

		<p>matters of Council business. 5 minutes are allowed for each member of the public.</p> <p>Consideration should be given to whether a member of the public wishing to speak should be required to give a period of notice, to identify the subject of the question and the area within which he/she resides or carries on business.</p>
Pg 10 / R 14	Urgency powers	<p>The Chief Executive may make urgent executive decisions in consultation with the Leader</p>

Appendix B

CABINET PROCEDURE RULES

1 Composition of the Cabinet

- 1.1 As provided by Section 11(3) and (8) of the Local Government Act 2000, the Council's Cabinet shall consist of the Leader of the Council and two or more Members of the Council. The number of Members appointed to the Cabinet including the Leader shall not exceed ten.
- 1.2 **[Council-led model]** The Council has decided that its Cabinet shall consist of ten Members, including a Leader and Deputy Leader. Portfolios of responsibility may be allocated by the Council to Cabinet members from time to time.
- 1.3 **[Council-led model]** The Leader and other Members of the Cabinet will be appointed by the Council at its first meeting. The Council may change the size and composition of the membership of the Cabinet at any time.
- 1.2 **[Strong Leader model]** The Council operates a model of Executive Arrangements which empowers the Leader to decide the Membership of the Cabinet and the responsibilities, and decision-making powers, of each Cabinet Member. Part 3 of this Constitution contains details of the delegations made by the Leader to each Cabinet Member.
- 1.3 **[Strong Leader model]** At the Annual Meeting of Council, the Leader will present to the Council a written record of delegations made by him for inclusion in the Council's scheme of delegation at Part 3 of this Constitution. The document presented by the Leader will contain the following information about executive functions in relation to the coming year:
 - 1.3.1 the names, addresses and electoral divisions of the people appointed to the Cabinet by the Leader;
 - 1.3.2 the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
 - 1.3.3 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them;
 - 1.3.4 The nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements, and the names of those Cabinet Members appointed to any joint committee for the coming year; and

- 1.3.5 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.
- 1.4 **[Strong Leader model]** Where the Cabinet, a committee of the Cabinet, or an individual Member of the Cabinet is responsible for an executive function, they may delegate further to a committee of the Cabinet, an area committee, joint arrangements, or an officer.
- 1.5 **[Strong Leader model]** Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated them.

2 The law and executive functions

- 2.1 Those responsible for discharging executive functions will ensure that they are acting within the law and this Constitution.
- 2.2 The functions in question are set out in Part 3 of this Constitution. This also sets out the body or individual responsible for taking decisions in respect of executive functions.
- 2.3 The Cabinet may appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Council.

3 Conflicts of Interest

- 3.1 Where the Leader or any Cabinet Member has a conflict of interest, he will follow the requirements of the Council's Code of Conduct for Members.
- 3.2 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Standards Committee for a dispensation from the provisions of the Code.
- 3.3 If the discharge of an executive function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest then action set out in 3.2 shall be considered.

4 Meetings of the Cabinet

- 4.1 The Cabinet will meet as indicated in the Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he sees fit. Locations of meetings will be published in the calendar of meetings.
- 4.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.
- 4.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside.
- 4.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.
- 4.5 Attendance by other Members of the Council or the public shall be in accordance with the Access to Information Procedure Rules, by invitation, or as set out in paragraphs 7.1 to 7.2 below.

5 Quorum at Cabinet Meetings

- 5.1 The quorum at a meeting of the full Cabinet, or a Committee or Sub-Committee established by the Cabinet, shall be 50% of its membership.

6 Taking of Decisions by the Cabinet

- 6.1 Decisions by the Cabinet, a committee of the Cabinet, or a sub committee of the Cabinet, will be taken in accordance with the Council's Access to Information Procedure Rules.

7 Members attending and speaking at Cabinet Meetings

- 7.1 The Chairman and Spokespersons of the Council's Scrutiny Committees shall be entitled to attend any formal public meeting of the Cabinet and to speak to any matter on the agenda for that meeting.
- 7.2 Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.

8 Business at Cabinet Meetings

- 8.1 The business to be transacted at meetings of the Cabinet will be set out in an Agenda for the meeting in question, subject to any requirements or exemptions under the Access to Information Procedure Rules.

- 8.2 The Agenda may be supported by additional papers prepared by the Officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information.
- 8.3 The Cabinet is obliged to consider matters referred to it by a Scrutiny Committee, or by the Full Council for consideration under the Scrutiny Rules.
- 8.4 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 8.5 The **[insert title of officer responsible for Democratic Services]** or his/her nominated Officer shall be responsible for preparing and distributing the Agenda for Cabinet meetings, attending meetings for the purpose of advising the Cabinet on matters within his/her area of responsibility and recording decisions as required under this Constitution.
- 8.6 In taking decisions, the decision-maker must satisfy itself that it has before it adequate and appropriate advice from its service, legal and financial advisers who shall be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires or probity then advice must be obtained from the Monitoring Officer and the Chief Finance Officer.
- 8.7 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 8.8 The **[insert title of officer responsible for Democratic Services]** will ensure that any matters referred to the Cabinet by the Council or the Council's Scrutiny committee are placed on the Agenda for the next appropriate meeting of the Cabinet.
- 8.9 Any Member of the Council may request the Leader to place an item on the Agenda of a meeting of the Cabinet. The Leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.
- 8.10 The Head of the Paid Service, the Monitoring Officer and/or the Chief Finance Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 8.11 Except where it is urgent, business cannot be conducted at formal meetings of the Cabinet unless it is included in the Agenda for the meeting. Where there urgent business must be dealt with, the requirements of the Access to Information Procedure Rules must be complied with.

- 8.12 The Cabinet will report to the Council, as required under the Access to Information Procedure Rules, on any matter which is classified as a key decision and which is dealt with under special urgency procedures.
- 8.13 Questions can be submitted by members of the public at meetings of the Cabinet in accordance with Council Procedure Rule No.35 and Appendix 7 of the Council Procedure Rules.

9 Voting at Cabinet Meetings

- 9.1 Voting at Cabinet meetings will be by a show of hands and any Member may require, immediately after the vote is taken, that the Minutes of the meeting record how he/she voted or abstained. Where there are equal votes cast, the Leader or in his/her absence, the person presiding will have a second and casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by secret ballot conducted in accordance with Council Procedure Rules.

10 Cabinet Committees/Sub-Committees

- 10.1 The Cabinet may appoint such Committees or Sub-Committees as it considers necessary and appropriate to assist in the discharge of its functions. In making such appointments, the Cabinet must specify the name of the Committee/Sub-Committee, its membership (including its Chairman and, if appropriate, Vice-Chairman) and the terms of reference of the body.

11 Motion Under Standing Order 12

- 11.1 As prescribed in Rule 43.10 of Part C of the Council Procedure Rules, a mover of a motion under Standing Order 12 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers.

12 Resolving Disputes

- 12.1.1 In the case of any dispute during the proceedings of the Cabinet the relevant parts of this Constitution will apply and, after considering the application of the relevant provisions, the person presiding at the meeting will rule on the issue in question and his/her ruling will be final.

13 Reserves/substitute members

- 13.1 There shall be no reserve or substitute members of the Cabinet.

14 Approval of Urgent Business

Where any matter is urgent and cannot await the next meeting, the Chief Executive may take the necessary action, provided that she has first consulted the Leader (or Deputy Leader if he/she is not available). Appendix 4 of the Council Procedure Rules apply.