

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:

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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