

## **THE CONSTITUTION**

### **PART 1 – SUMMARY AND EXPLANATION (coloured BLUE)**

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## **PART 8 – MANAGEMENT STRUCTURE (coloured BUFF)**

Management Structure Chart

## SUMMARY AND EXPLANATION

### The Council's Constitution

Tendring District Council has agreed a constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the Law, while others are a matter for the Council to choose.

### What's in the Constitution?

The Constitution is made up of seven major parts as follows:

- Part 1      The Summary and Explanation
- Part 2      The Articles of the Constitution
- Part 3      The Delegated Powers and Schedules of Responsibility for Functions
- Part 4      Council Procedure Rules
- Part 5      Rules of Procedure
- Part 6      Codes and Protocols
- Part 7      Members' Allowances Scheme

### Part 2    The Articles of the Constitution

Article 1 of the Constitution commits the Council to work towards its vision for Tendring as set out in the Council's Corporate Plan. Articles 2-16 explains the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2)
- Citizens and the Council (Article 3)
- The Full Council (Article 4)
- Chairing the Council (Article 5)
- Overview and Scrutiny Committees (Article 6)
- The Cabinet (also referred to as the Executive) (Article 7)
- Committees (Article 8)



- Standards Committee and the Town and Parish Councils' Standards Sub-Committee (Article 9)
- Area Committees and Forums including Community Consultation and Participation (Article 10)
- Joint Arrangements (Article 11)
- Officers (Article 12)
- Decision Making (Article 13)
- Finance, Contracts and Legal Matters (Article 14)
- Review and Revision of the Constitution (Article 15)
- Suspension, Interpretation and Publication of the Constitution (Article 16)

**Part 3 Delegated Powers**

This part of the Constitution sets out the key delegated powers to each element of the Council's decision making structure.

**Parts 4 & 5 Procedure Rules for Operation of the Constitution**

Set out in these parts of the Constitution are the detailed rules and operating procedures that relate to each of the key sectors of the Constitution namely:

- Council Procedure Rules (Part 4)
- Rules of Procedure (Part 5)

**Part 6 Codes and Protocols**

This includes:

- The Members' Code of Conduct
- Complaints Procedure
- Monitoring Officer Protocol
- Independent Person Protocol
- Protocol on Members/Officer Relations

- Members' Planning Code & Protocol

### **Part 7 Members' Allowances Scheme**

The Members' Allowances Scheme is approved by the Council following consideration of the recommendations of the Independent Remuneration Panel on Allowances.

### **Part 8 Management Structure**

#### **How decisions are made**

Decisions are taken on a day-to-day basis by the Cabinet, which is made up of the Leader of the Council and the Portfolio Holders appointed by the Leader. Key decisions to be made are published in so far as they can be anticipated. Meetings of Cabinet are generally open to the public to attend, except where personal or confidential matters are being discussed. The Cabinet has to make decisions in accordance with the Council's overall policies and budget. If it wishes to make a decision that is outside the Budget or Policy Framework, this must be referred to the Council as a whole to decide.

#### **Overview and Scrutiny**

The Council has Overview and Scrutiny Committees that support the work of the Cabinet and the Council as a whole. These Committees may hold public inquiries into matters of local concern leading to reports and recommendations to advise the Cabinet and the Council as a whole on policies, budget/resources and service delivery. The Overview and Scrutiny Committees also monitor the decisions of the Cabinet and a decision that has been made by the Cabinet but not yet implemented can be "called-in". This enables the decision to be further considered. They may also be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

#### **The Council's Staff**

The Council's staff (called "officers") give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely.

#### **Citizens' Rights**

Citizens have a number of rights in their dealings with the Council, which are set out in more detail in Article 3. Some of these are legal rights and others depend on the Council's own processes.

Where members of the public use specific Council services, for example as a Council Tenant, they have additional rights which are not covered in this Constitution.

The Council welcomes participation by its citizens in its work.

**ARTICLES**

**ARTICLE 1 – THE CONSTITUTION**

**1.01 Powers of the Council**

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

**1.02 The Constitution**

This Constitution, including all its schedules and appendices, is the Constitution of the Tendring District Council.

**1.03 Purpose of the Constitution**

The purpose of the Constitution is to:

- 1 Provide key elements of the Council's overall governance arrangements;
- 2 Enable decisions to be taken efficiently and effectively;
- 3 Create an effective means of holding decision-makers to public account;
- 4 Enable the Council to provide clear leadership to the community, working in partnership with the local community, businesses and other organisations for the long term well-being of the District;
- 5 Support the involvement of the local community in the process of local authority decision making;
- 6 Ensure that no one will review, or scrutinise, a decision in which they were directly involved;
- 7 Help Councillors represent their residents more effectively;
- 8 Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for their decisions; and
- 9 Provide the framework and structure in which cost effective quality services to the community are delivered.

**1.04 Interpretation and Review of the Constitution**

Any interpretation of the Constitution must have regard to the purposes stated above.

## Part 2 – ARTICLES

### ARTICLE 1 – THE CONSTITUTION

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Where the context allows, words in the Constitution indicating one gender include both genders. Unless otherwise indicated, where a “day” is referred to, this will mean a “working day” and will not include weekends or Bank Holidays.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

**ARTICLE 2 – MEMBERS OF THE COUNCIL**

**2.01 Composition and Eligibility**

**(a) Composition**

The Council comprises 48 members, otherwise called Councillors. One or more Councillors will be elected by the voters in Wards in accordance with a scheme drawn up by the Local Government Boundary Commission for England, and approved by the Secretary of State.

**(b) Eligibility**

Only registered voters of the District, or those living or working there, will be eligible to hold the office of Councillor.

**2.02 Election and Terms of Councillors**

The regular election of Councillors will be held on the first Thursday in May every four years beginning in 2003. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular elections.

**2.03 Roles and Functions of all Councillors**

**(a) Key roles. All Councillors will:**

- (i) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- (ii) Represent their communities and bring their views into the Council's decision-making process, i.e. become an advocate for their communities;
- (iii) Effectively represent the interests of their ward and of individual residents;
- (iv) Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances;
- (v) Be involved in decision-making for the people of the District as a whole;
- (vi) Be available to represent the Council on other bodies; and
- (vii) Contribute to the governance and effective management of the Council's business at meetings of the Council, Cabinet and other Committees and Sub-Committees, maintaining the highest standards of conduct and ethics.

**(b) Rights and Duties**

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Members are entitled to receive information from Officers in a timely manner to reasonable requests for the purposes of undertaking their role as Ward Councillors, decision makers and performing functions, such as overview and scrutiny (**this is referred to as the common law ‘need to know’ principle**). Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the member to properly perform their duties as a councillor.

However, if the member’s motive for seeing documents is indirect, improper or ulterior, this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go off on ‘fishing expeditions’ through their council’s documents. If a councillor is a member of a particular committee or sub-committee then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See R V Clerk to Lancashire Police Committee ex parte Hook [1980] Q.B. 603).

- (iii) Councillors will not make public information that is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.
- (iv) For these purposes “confidential” and “exempt” information is defined in the Access to Information Rules in Part 5 of this Constitution.

**2.04 Conduct**

Councillors will at all times observe the Members’ Code of Conduct and protocols set out in Part 6 of this Constitution.

Councillors are also expected to comply with the requirements of any risk assessments issued by the Council in performance of their functions

**2.05 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Part 7 of this Constitution.

**ARTICLE 3 – CITIZENS AND THE COUNCIL**

**3.01 Citizens' Rights**

The rights to information are explained in more detail in the Access to Information Rules in Part 5 of this Constitution. Other rights include:

(a) **Voting and petitions:**

People on the Electoral Register for the District have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.

(b) **Information**

The public have a right to:

- (i) Attend meetings of the Council and its Committees and Sub-Committees except where confidential or exempt information is likely to be disclosed (Committees for this purpose do not include Working Parties/Groups and/or Task and Finish Review Groups);
- (ii) Attend meetings of the Cabinet when key decisions are being considered;
- (iii) Find out from the Council's website what key decisions will be taken by Cabinet and when;
- (iv) See reports and background papers, and any records of decisions made by the Council and the Cabinet; and
- (v) In accordance with the published timescales inspect the Council's accounts and make their views known to the external auditor.

(c) **Participation**

The public have a right to participate by submitting written questions to Full Council meetings and contribute to investigations by the Overview and Scrutiny Committees. The public can also participate at meetings of the Planning Policy & Local Plan Committee and the Planning Committee in accordance with the relevant Public Speaking Schemes.

(d) **Complaints**

The public have a right to complain to:

- (i) A Ward Councillor;
- (ii) The Council itself under its Complaints Scheme, details of which are available on the Council's website;

- (iii) The Local Government and Social Care Ombudsman, after using the Council's own Complaints Scheme;
- (iv) The Housing Ombudsman;
- (v) The Monitoring Officer about a breach of the Council's Code of Conduct (which sets out the standards of behaviour expected of a Councillor and is contained within Part 6 of this Constitution). The Complaints Procedure is available on the Council's website.

**3.02 Citizens' Responsibilities**

At meetings of the Council, its Committees or Cabinet, members of the public must treat Councillors and Officers with respect and courtesy and must not wilfully harm the property of the Council, Councillors or Officers.



**ARTICLE 4 – THE FULL COUNCIL**

**4.01 Meanings**

(a) **Policy Framework**

The policy framework means those statutory policies and plans which must be approved or adopted by the full Council and are, for the time being, the following:

- Council's Corporate Plan;
- Crime and Disorder Reduction Strategy (Sections 5 and 6 of the Crime and Disorder Act 1998);
- Plans and strategies which together comprise the Local Development Plan Documents (Section 15 of the Planning and Compulsory Purchase Act 2004);
- The plan and strategy which comprise the Housing Investment Programme (HRA Business Plan and Housing Strategy);
- Statement of Licensing Policy (Licensing Act 2003);
- Statement of Licensing Policy (Gambling Act 2005) (on the recommendation of the Cabinet who will have considered a referral from the Licensing and Registration Committee);

Other plans and strategies which the Council may decide from time to time are to be adopted by the Council as a matter of local choice as part of the policy framework, including but not limited to:

- Procurement Strategy (including the Social Value Policy)
- Climate Change Action Plan

(b) **Budget:**

The budget is a statement identifying the allocation of financial resources (as provided for in the Local Government Finance Act 1992), including capital resources, to different services and projects, proposed taxation levels, to contingency provisions ('reserves and balances') and any plan or strategy for the control of the local authority's borrowing or capital expenditure. This does not include the Housing Revenue Accounts Budgets or rent fixing.

The term budget also does not include the determination of the Council's Capital Strategy. The Annual Budget setting process involves the determination of such allocations, decisions and prudential indicators and setting of the Council Tax.

(c) **Housing Land Transfer**

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of urban disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

**4.02 Functions of the Full Council**

Only the Council will exercise the following functions:

1. Approving or adopting any plans and strategies that form the Council's Policy Framework;
2. Approving the overall budget as set out in 4.01 (b) above including approving and setting the Council Tax;
3. The making of any application to the Secretary of State in respect of any Housing Land Transfer as set out in 4.01 (c) above;
4. Adopting and changing the Constitution unless specifically delegated to the Monitoring Officer;
5. The adoption or approval of a plan or strategy, other than a plan or strategy for the control of the authority's borrowing or capital expenditure or forming part of the Policy Framework, where the Council determines that the decision whether the plan or strategy should be adopted or approved should be taken by them;
6. Approving for the purposes of its submission to the Secretary of State for independent examination under Section 20 of the Planning and Compulsory Purchase Act 2004, of a development plan document;
7. Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 5 of this Constitution, making executive decisions about any matter where the decision-maker is minded to make a decision contrary to the policy framework, or contrary to or not wholly in accordance with, the budget
8. The election of the Leader of the Council or the passing of a resolution to remove the Leader of the Council;

9. Agreeing and/or amending the terms of reference for Committees, Sub-Committees etc, deciding on their composition and making appointments to them including their Chairmen and Vice-Chairmen;
10. The appointment of any representatives to outside bodies, including joint committees, unless the appointment is a Cabinet function or the function has been delegated by the Council;
11. Adopting a Members' Allowances Scheme;
12. Adopting and amending the Authority's Members' Code of Conduct;
13. The appointment of Independent Persons on the recommendation of the Monitoring Officer as to who should be appointed;
14. The appointment of the Independent Remuneration Panel on the recommendation of the Chief Executive as to who should be appointed;
15. All functions of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, which the Council has retained for discharge by itself as set out in Part 3, Schedule 2 of the Council's Constitution;
16. All local choice functions of Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, which the Council has retained for discharge by itself as set out in Part 3, Schedule 1 of the Council's Constitution;
17. All other matters which by law must be reserved to the Council.

#### **4.03 Council Meetings**

Council meetings will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### **4.04 Responsibility of Functions**

The Council will maintain the tables and appendices in Part 3 of the Constitution setting out the responsibilities of the Council's functions which are not the responsibility of Cabinet as prescribed in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.

#### **4.05 Conflict Resolution in Setting the Budget and Policy Framework**

The process of resolving conflict in the setting of the budget and policy framework is set out in the Budget and Policy Framework Procedure Rules in Part 5 of the Constitution.

## ARTICLE 5 – CHAIRING THE COUNCIL AND COMMITTEES

### 5.01 Role and Function of the Chairman of the Council

The Chairman and Vice-Chairman will be elected by the Council annually.

The Chairman and the Vice-Chairman must not be Members of the Cabinet.

The Chairman or, in their absence, the Vice-Chairman will have the following roles and responsibilities:

1. To uphold and promote the purposes of the Constitution, and to rule on the interpretation and application of the Constitution as and when necessary at meetings;
2. To preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. To ensure that the Council meeting is a forum for debate of matters of concern to the local community and the place at which Members who are not on the Cabinet are able to generally hold the Cabinet to account;
4. To promote public involvement in the Council's activities;
5. To attend such civic and ceremonial functions as the Council and they determine appropriate;
6. To be the custodian of the democratic process of the Council;
7. To call extraordinary meetings of the Council under Schedule 12 Part I, Section 3 of the Local Government Act 1972.

### 5.02 Role and Function of the Chairman of a Committee

The Chairman and Vice-Chairman of a Committee will be appointed by the Council annually.

The Chairman, or in their absence, the Vice-Chairman will have the following roles and responsibilities:

1. To uphold and promote the purposes of the Constitution, and to rule on the interpretation and application of the Constitution as and when necessary at meetings;
2. To preside over meetings of their Committee so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;

3. To ensure that the Committee meeting is a forum for debate of matters of concern to the local community;
4. To call special meetings of their Committee under Council Procedure Rule 35.2.

**5.03 Addressing the Chairman**

The relevant Councillor at the beginning of their term of office as Chairman of the Council or as a Chairman of a Committee will announce how they wish to be addressed in meetings, using one or more of the following preferred terms;

Chairman;

Madam Chairman;

Chair; or

Chairperson.

**5.04 Training of the Chairman of the Council or Committees**

Once elected/appointed as the Chairman of the Council or of an individual Committee, the relevant Councillor will be expected to attend training to enable them to fulfil their role and its responsibilities as set out in points 2 and 3 in paragraphs 5.01 and 5.02 above.

The Vice-Chairman of the Council and the Vice-Chairmen of Committees will also be expected to attend such training.

## Part 2 - ARTICLES

### ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES

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#### ARTICLE 6 – OVERVIEW AND SCRUTINY FUNCTION

##### 6.01 General Role and Functions:

The Council will appoint two Overview and Scrutiny Committees, whose terms of reference are as set out below. Within its functions, each Overview and Scrutiny Committee will:

1. Review or scrutinise executive decisions made by the Cabinet (including those delegated to Portfolio Holders and Officers) or are due to be made by the Cabinet or a Portfolio Holder including performance in relation to individual decisions over a period of time;
2. Act as a consultee on policy development and review of policies;
3. Submit to Full Council for approval an annual overview and scrutiny work programme;
4. Make reports or recommendations to the Cabinet or the Council as appropriate, with respect to the discharge of any Council function or on any matter affecting the authority's area or its inhabitants.
5. Prepare and present an annual performance report to Full Council covering the outcomes of the overview and scrutiny functions by each committee;
6. Deal with any Call-in of Cabinet decisions (including those delegated to Portfolio Holders and Officers) in accordance with the Overview & Scrutiny Procedure Rules;
7. Consider requests for scrutiny reviews under the Councillor Call for Action process and petitions as referred under the Petitions Scheme and Council Procedure Rules.

##### **In undertaking the General Role the following principles apply:**

- (i) The focused co-ordination of all overview and scrutiny functions on behalf of the Council including the performance reporting on the Corporate Plan, Priorities and Projects;
- (ii) Appoint, where appropriate, and in accordance with its agreed work programme, a group to undertake researched and evidenced reviews on a specific topic, on a task and finish basis. The terms of reference of any Task and Finish group must be agreed by the relevant Overview and Scrutiny Committee prior to its commencement; and
- (iii) Consideration of the Council's priorities and resources when making researched and evidenced recommendations and referral decisions as an outcome of the scrutiny and prioritising those referrals in a timely manner.

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(Peach)

(November 2018) Part 2.12

## Part 2 - ARTICLES

### ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES

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#### 6.02 Terms of Reference:

The terms of reference for each Overview and Scrutiny Committee are set out below:

##### (i) **Community Leadership Overview and Scrutiny Committee**

Meetings of the Committee will be held in accordance with the programme of meetings normally approved at the Annual Meeting of the Council. In addition, extraordinary meetings may be called from time to time as and when appropriate. A meeting may be called by the Chairman of the Committee, or by the Head of Democratic Services & Elections. If considered necessary or appropriate. Meetings of Task and Finish Groups can be called as required, following the terms of reference being agreed by the Committee.

To perform the role of Overview and Scrutiny and its functions in relation to

- Community Leadership developing the external focus of overview and scrutiny on “district-wide” issues’ (and where appropriate sub regional, regional and national issues), in particular through collaborative work with local partner authorities, providers, stakeholders and members of the public.
- Approval of discrete researched and evidenced reviews on the effectiveness of partnership operating in the area with particular focus on:
  - Community Safety
  - Health and Well-being
  - Economy, Skills and Educational Attainment
- Community engagement, development and empowerment
- Leisure and Tourism (except matters relating to budgets)
- Housing Strategy and Homeless Service (except the Housing Revenue Account)
- Emergency Planning

The Community Leadership Overview & Scrutiny Committee will also act as the Council’s designated “crime and disorder committee” for the purposes of Section 19 of the Police and Justice Act 2006 and will have the power –

- (a) *to review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities[\*] of their crime and disorder function;*
- (b) *to make reports or recommendations to the local authority with respect to the discharge of those functions.*

## Part 2 - ARTICLES

### ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES

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\* *“The responsible authorities” means the bodies and persons who are responsible authorities within the meaning given by section 5 of the Crime and Disorder Act 1998 (c.37) (authorities responsible for crime and disorder strategies) in relation to the local authority’s area.*

In fulfilling that function the Community Leadership Overview & Scrutiny Committee will have the power (whether by virtue of section 9F(2) or 21(2) of the Local Government Act 2000 or regulations made under section 9JA(2) or 32(3) of that Act or otherwise) to make a report or recommendation to the local authority with respect to any matter which is a local crime and disorder matter in relation to a member of the authority.

The crime and disorder committee shall meet to review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder function as the committee considers appropriate but no less than once in every twelve month period.

#### (ii) **Resources and Services Overview and Scrutiny Committee**

- The Chairman and the Vice-Chairman of the Committee will normally be Members of a political group that is not represented on the Cabinet. Meetings of the Committee will be held in accordance with the programme of meetings approved at the Annual Meeting of the Council. In addition, extraordinary meetings may be called from time to time as and when appropriate. A meeting may be called by the Chairman of the Committee, or by the Head of Democratic Services & Elections, if considered necessary or appropriate. Meetings of Task and Finish Groups can be called as required, following the terms of reference being agreed by the Committee.
- To perform the role of Overview and Scrutiny and its functions in relation to the effective use of the Council’s resources including approval of discrete researched and evidenced reviews on the effectiveness of:

Financial Forecast Budget setting and monitoring (including General Fund & Housing Revenue Account)

Service Delivery and Performance (where not delegated to the Community Leadership Overview and Scrutiny Committee)

Procurement and Contract Management

Transformation and Digital Strategies

Customer Service and Standards



## Part 2 - ARTICLES

### ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES

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#### 6.03 Proceedings of the Overview and Scrutiny Committees:

The Overview and Scrutiny Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 5 of this Constitution.

**ARTICLE 7 – THE CABINET (ALSO REFERRED TO AS THE EXECUTIVE)**

**7.01 Role and Responsibilities:**

The Cabinet will carry out all of the local authority's functions, known as Executive Functions, that are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

**7.02 Form and Composition:**

The Cabinet will consist of the Leader of the Council together with other Councillors appointed to the Cabinet by the Leader. The Leader will determine the number of Councillors who may be appointed to the Cabinet subject to the statutory minimum requirement of two Councillors appointed to the Cabinet by the Leader and the statutory maximum number of ten members of the Cabinet.

**7.03 Leader of the Council:**

The Leader of the Council will be a Councillor elected to the position by the full Council. The election of the Leader will normally be carried out at the Annual Meeting of the Council following the District Council Elections. The Leader will hold office until the annual meeting of the Council following the next District Council elections or until:-

- (a) They resign from the office (only upon disqualification or resignation in accordance with Section 91B of the Local Government Act 2000); or
- (b) They cease to be a Councillor only; or
- (c) The Council passes a resolution removing the Leader from office at an earlier date. If the Council so passes a resolution to remove the Leader, a new Leader is to be elected at the meeting at which the Leader is removed from office or at a subsequent meeting.

Upon expiry of the fixed term the Leader will be eligible for re-election for subsequent fixed terms.

Upon the occurrence of a vacancy in the office of the Leader, the Council shall fill the vacancy at the next ordinary meeting of the Council. The person appointed to fill the vacancy shall hold office for the remainder of the original term subject to earlier termination as provided for above.

In the interim period between the vacancy in the office of the Leader and the next ordinary meeting of the Council, the Deputy Leader will act as Leader on an interim basis.

**7.04 Deputy Leader of the Council**

The Leader of the Council will appoint one of the members of the Cabinet to be his deputy. The Deputy Leader of the Council, unless he resigns as Deputy Leader or ceases to be a member of the authority, will hold office until the end of the term of office of the Leader of the Council. However, the Leader may, if he thinks fit, remove the Deputy Leader from office.

Where a vacancy occurs in the office of the Deputy Leader the Leader will appoint another person in his place.

If for any reason the Leader is permanently unable to act or the office of Leader is vacant, the Deputy Leader will act temporarily in his place until the next formal ordinary meeting of the Council when a new Leader will be elected.

If the Deputy Leader is also unable to act or the office is vacant the Cabinet will act in the Leader's place or will arrange for a member of the Cabinet to act in his place.

**7.05 Other Cabinet Members (also known as Portfolio Holders)**

Other Cabinet members shall hold office until:

- (a) they resign from office; or
- (b) they are no longer Councillors; or
- (c) they are removed from office by the Leader who must give written notice of any removal to the Chief Executive. The removal will take effect two working days after receipt of the notice by the Chief Executive.

**7.06 Proceedings of the Cabinet**

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out below at 7.08.

**7.07 Responsibility for Executive Functions**

The arrangements for the discharge of Executive Functions are contained in Part 3 of the Constitution.

The Executive functions may be discharged by:

- (i) the Cabinet as a whole;
- (ii) a Committee of the Cabinet, where appointed by the Leader;
- (iii) an individual member of the Cabinet;
- (iv) an officer;
- (v) an area committee;

- 
- (vii) joint arrangements; or
  - (viii) another local authority.

Part 3 of the Constitution will be maintained and kept up to date with the agreement of the Leader of the Council, setting out which Members of Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the exercise of particular Executive Functions.

## **7.08 Cabinet Procedure Rules**

### **1. MEETINGS**

#### **1.1 Cabinet Meetings**

The Cabinet will meet at times to be agreed by the Leader. The Cabinet shall meet at the Council's main offices (the Town Hall) or another location to be agreed by the Leader.

#### **1.2 Meetings of the Cabinet**

Meetings of the Cabinet and their committees must be held in public in accordance with the Access to Information Procedure Rules except where confidential or exempt information is to be discussed.

In accordance with the approved Protocol for such matters, the Council will make an audio and/or audio-visual live stream and recording of meetings of Cabinet and their Committees, which will be made available on the Council's website for a period of at least one year from the date of the relevant meeting.

#### **1.3 Quorum**

The quorum for a meeting of the Cabinet shall be three including the Leader or in his absence the Deputy Leader.

#### **1.4 Chairmanship**

The Leader (or in his absence the Deputy Leader) will preside at any meeting of the Cabinet at which he is present.

#### **1.5 Who may Attend?**

- (i) Subject to the Access to Information Rules and the provisions of the Members' Code of Conduct, any Councillor may attend meetings of the Cabinet. They may not speak without the consent of the Leader, or in any case vote.
- (ii) The Leader or Deputy Leader of any political group may, as of right, attend meetings of the Cabinet and participate fully in the discussion on all agenda items, but cannot vote. If requested by the Leader or Deputy Leader of a group to do so, the minutes of the meeting of Cabinet on a particular matter will record their Group's opposition to all, or part, of a decision.

- (iii) Meetings of the Cabinet shall have in attendance the Chief Executive, the Chief Financial Officer (or their Deputy), the Monitoring Officer (or their Deputy) and other relevant Corporate Directors or Assistant Directors in the light of items to be discussed, or their nominated representatives, at the discretion of the Chief Executive.
- (iv) The Chief Executive, Chief Financial Officer and Monitoring Officer have the right to attend, speak on an item of business and present a report to discharge their statutory and constitutional duties whenever necessary.
- (v) Where a Member has submitted a Motion to Council under Council Procedure Rule 12.2 and that motion has been referred to Cabinet under Council Procedure Rule 12.6 or Council Procedure Rule 12.7, that Member will have the right to attend the relevant meeting of Cabinet and present their Motion/answer Cabinet's questions, as appropriately permitted under Council Procedure Rule 12.10.
- (vi) The Constitution includes no provision for substitute members at meetings of the Executive.

## **2. AGENDA**

### **2.1 Members' Written Questions**

Any Member has the right to submit a written question to the Cabinet on any item on their agenda and to attend to present it at the meeting of the Cabinet when the item is to be considered. Such question shall be submitted at least 24 hours before this Cabinet meeting. The Member may withdraw their question at any time.

### **2.2 Order of Business**

At each meeting of the Executive the following business will be conducted:

- (a) Consideration of the minutes of the last meeting;
- (b) Declarations of interest, if any;
- (c) Matters referred to the Cabinet (by the Overview and Scrutiny Committees or the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 5 of this Constitution;
- (d) Any matter where the Overview and Scrutiny Committee or Council have resolved that an item be considered by the Cabinet. The Chief Executive will ensure that an item is placed on the agenda of the next available meeting;
- (e) Consideration of reports from the Overview and Scrutiny Committees;

- 
- (f) Matters set out in the Agenda for the meeting and which shall indicate which are key decisions, and which are not, in accordance with the Access to Information Procedure Rules set out in Part 5 of this Constitution;
  - (g) Key decisions, as indicated on the agenda for the meeting, in accordance with Access to Information Procedure Rules set out in Part 5 of this Constitution;
  - (h) Any matter relating to an executive function that the Leader of the Council wishes to be included, whether or not authority has been delegated to the Cabinet, a Committee of it or any Member or Officer in respect of that matter. The Proper Officer will comply with the Leader's requests in this respect;
  - (i) Any matter relating to an executive function requested by a member of the Cabinet. The Chief Executive will be required to make sure that an item is placed on the agenda of the next available meeting of the Cabinet for consideration, subject to the issue in question not having been considered in the last six months;
  - (j) Any matter relating to an executive function requested by a Member of the Council, subject to the agreement of the Leader of the Council. A Member may ask the Leader to put an item on the agenda of a Cabinet meeting for consideration, subject to the issue in question not having been considered in the last six months. If the Leader agrees, the item will be considered at the next available meeting of the Cabinet. The notice of the meeting will give the name of the Councillor who asked for the item to be considered who will also be invited to attend the meeting. There may only be up to two such items per Cabinet meeting;
  - (k) Any matter included on the agenda by the Monitoring Officer and/or the Chief Financial Officer for consideration. They may require the Chief Executive to call such a meeting in pursuance of their statutory duties. In other circumstances, where any two of the Chief Executive, Chief Financial Officer and Monitoring Officer are of the opinion that a matter requires a decision, they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting of the Cabinet soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered; and
  - (l) The Chief Executive or any member of Management Team may place an item on the agenda of any meeting of the Executive.

### 3. CONSULTATION

All reports to the Cabinet from any Member of the Cabinet or an Officer on proposals relating to the Budget and Policy Framework must contain details of the nature and extent of consultation with stakeholders and relevant Overview and Scrutiny Committees, and the outcome of that consultation.

Reports about other matters will set out the details and outcome of consultation, as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

Prior to all Cabinet Decisions, Ward Members must be consulted in specific ward related matters; the outcome of the consultation will be included within the body of the Report.

All reports to the Executive will include details of all appropriate officer advice in respect of the matter under consideration, in particular, advice from the Chief Executive, the Chief Financial Officer and/or the Monitoring Officer.

#### **4. CONDUCT**

##### **(a) Disturbance by Public – Removal of Member of the Public**

If a member of the public interrupts proceedings, the Leader will warn the person concerned. If he continues to interrupt, the Leader will order his removal from the meeting room.

##### **(b) Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Leader may call for that part to be cleared.

#### **5. PROCEDURES FOR PRIVATE MEETINGS OF THE CABINET**

The rules concerning private meetings of the Cabinet are set out in the Access to Information Procedure Rules in Part 5. This does not apply to Portfolio Holder Working Parties or Groups, who meet for specific subjects with cross party representation.

#### **6. DECISIONS**

##### **6.1 Overlap of Interests**

(a) In cases where there is an overlap in responsibilities between Portfolio Holders, the Leader of the Council shall advise of the relevant Portfolio Holder to make the decision.

(b) Where any, or all, members of the Cabinet have an interest this should be dealt with in accordance with the Council's Code of Conduct for Members as set out in Part 5 of this Constitution.

##### **6.2 How are Decisions to be taken by the Cabinet?**

Cabinet decisions which have been retained to the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Procedure Rules, as applicable in Part 5 of the Constitution.

After any meeting of the Cabinet, whether held in public or private, or with regards to decisions taken by individual members of the Cabinet, within their delegated powers, the Chief Executive, or, where no Officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting or by individual members of the Cabinet. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting. The record of decisions made at meetings will take the form of the minutes of the meeting.

Records of all decisions will be published as soon as practicable after they have been taken and made publicly available. In accordance with the Overview and Scrutiny Procedure Rules, decisions of the Cabinet, subject to certain exceptions, may not be implemented until the expiry of the call-in period.

## **7. PROCEDURES FOR PORTFOLIO HOLDER WORKING PARTIES**

Portfolio Holders can form working parties to examine and advise the Portfolio Holder under specific aspects of the Portfolio Holder's responsibility, for a period limited to delivery of the project.

The process for forming a Portfolio Holder Working Party will require a letter or personal email sent to the Leader of each political group inviting them to identify members of their group who are interested in serving on the working party.

The appointment of Members to serve on working parties will therefore have had regard to the suggestions of Group Leaders and if necessary, the need to maintain a broad political balance within the membership thereof.

The Portfolio Holder will determine the size of their working party together with its terms of reference. The Portfolio Holder will also decide whether to involve relevant Ward Members and interested third parties in the work of the working party.

Any decision of a Portfolio Holder in respect of the administration of a working party cannot be called-in for scrutiny.

Any formal decision taken by a Portfolio Holder following the outcome of the Working Party will need to be formally recorded in accordance with Article 7 (7.08 Section 6.2) and include any declarations of interest as required by the Members' Code of Conduct and details of consultation undertaken with the relevant Ward Members.



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**ARTICLE 8 – COMMITTEES****8.01 Committees**

The Council has the following Non-Executive Committees and Sub-Committees, the majority of which are appointed at Annual Council with a membership that reflects the political make-up of the Council. The roles and responsibilities and delegation of these Committees and Sub-Committees are set out in Part 3, Schedule 2, of this Constitution with current membership as set out below.

<b>Committee</b>	<b>Membership</b>
Audit Committee	7
Community Leadership Overview and Scrutiny Committee	9
Human Resources and Council Tax Committee	9
Licensing and Registration Committee	9
Planning Policy and Local Plan Committee	11
Planning Committee	9
Resources and Services Overview and Scrutiny Committee	9
Standards Committee	7
Miscellaneous Licensing Sub-Committee	5

In addition, the following Sub-Committees are also appointed which are not subject to the rules regarding political proportionality:

Premises/Personal Licences Sub-Committee	3
Town and Parish Councils' Standards Sub-Committee	3 TDC Cllrs (+ 3 non-voting co-opted Parish Council representatives)
Human Resources Sub-Committee	3 a Portfolio Holder, as determined by the Leader of the Council, Chairman (or Vice Chairman) of the Human Resources and Council Tax Committee and a named committee member from a political group that is not represented on the Cabinet

**8.02 Roles and functions:**

The Roles and the functions of these Committees and Sub-Committees are set out in Part 3 of this Constitution.

**8.03 Proceedings:**

Subject to Article 13.4, Committees and Sub-Committees will conduct their proceedings in accordance with the relevant Procedure Rules set out in Part 4 of this Constitution.

**ARTICLE 9 – STANDARDS COMMITTEE & TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

**9.01 Composition:**

- The Standards Committee (“the Committee”) shall consist of seven Members of Tendring District Council;
- No more than one Member shall be a Member of its Cabinet;
- No Leaders of Political Groups will be members of the Committee;
- The only Members permitted to be substitutes on the Committee will be those named at the beginning of the Municipal Year by the Political Group Leaders;
- No Member will be permitted to participate in meetings of the Standards Committee or its Sub-Committee unless they have undertaken specific Standards Committee training;
- No substitute Members will be permitted, unless they have undertaken specific Standards Committee training;
- The Committee is politically balanced in accordance with Section 15 of the Housing and Local Government Act 1989;
- The Committee will have a standing Chairman and Vice Chairman appointed by the Full Council. However, when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Committee who is not from the same Political Group as the Member who is the subject of the complaint (nor of the same Group as the Complainant if a Member of the Council); and
- A member of the Standards Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

**9.02 Quorum**

- At least 3 voting Members of the Committee.

**9.03 Meetings**

- At least quarterly.

**9.04 Terms of Reference**

- The Standards Committee will exercise the functions in accordance with the terms of reference set out in Part 3 of this Constitution.

**9.05 TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

**(1) Terms of Reference:**

- To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with its Code of Conduct.

**(2) Composition:**

- Three Members of the Standards Committee and three non-voting co-opted Town and Parish Council members to be nominated by the Tendring District Association of Local Councils;
- The nominated Town and Parish Council members will be of independent standing and will not have served as District or County Councillors for a period of four years prior to their nomination; and
- A member (or non-voting co-opted member) of the Town and Parish Councils' Standards Sub-Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

**(3) Meetings:**

- The Sub-Committee will meet as and when required.

**(4) Quorum:**

- The Quorum for meetings of the Standards Sub-Committee is three voting Members. All three Tendring District Councillor Members, or substitutes for them, therefore, have to be present at the Sub-Committee.

**(5) Voting:**

- Only the three District Council Members (or their substitutes, if applicable) on the sub-Committee can vote.
- The views and recommendations of the three Town and Parish Council representatives will be recorded in the minutes of the meeting.

**(6) Chairmanship:**

- The Sub-Committee will appoint a Chairman from the District Councillor membership.
- However, when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Sub-Committee who is not from the same political Group as the Member who is the subject of the Complaint (nor of the same Group as the complainant if a Member of the Council).

**Part 2 – ARTICLES**

**ARTICLE 10 – COMMUNITY CONSULTATION & PARTICIPATION**

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**ARTICLE 10 – COMMUNITY CONSULTATION AND PARTICIPATION**

**10.01 Community Consultation and Participation**

The Council will promote community consultation and participation through a range of opportunities as set out in Table 1 below. Where Councillors are appointed to outside bodies this information is included within the Council's website.

**Table 1**

<b>Consultation and Participation Opportunity</b>	<b>Form, Function and Scope</b>
Local Councils	Autonomous local authorities within a set area able to raise funds through the Council Tax to provide local services (i.e. Town and Parish Councils). Consultation with local Councils could also include consultation with the Tendring District Association of Local Councils (TDALC). It should be remembered that not all areas in the District have local Councils.
Community Forums	Public meetings designed to enable the Council to engage with specific sections or areas of the local community so that services are designed to meet their needs.
Community/Business Groups	Organisations that represent individuals, businesses etc. They may be solely local in nature or affiliated to regional/national bodies. Consultation will depend entirely on the nature of the organisation and the interests they seek to represent or provide for. Organisations will vary in size and the administrative support available to them.
Tenants and Sheltered Housing Panels	Organised through the Tenants' Compact as a consultation and participation opportunity for tenants and private owners of properties in estates. These Panels provide an opportunity for general consultation and participation by area.
Service Users	Consultation with those who use a particular service can provide extensive information about how that service can meet expectations about it.
Petitions	The Council has approved and published a Petitions Scheme detailing how it will respond to petitions received from the community.
Surveys, feedback and Consultations	Throughout the year a number of paper based and on-line surveys and consultations are undertaken to seek residents' views. Through complaints monitoring the Council can examine feedback the complaints provide to identify areas to

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(Peach)

(March 2021) Part 2.28

**Part 2 – ARTICLES**

**ARTICLE 10 – COMMUNITY CONSULTATION & PARTICIPATION**

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	address. The Council’s social media accounts provide opportunities for the public to seek responses and express views.
Public Invitation/Notice	Whether required by statute or otherwise, public notices on the Council’s website, principal offices, “site notices”, notices to adjoining owners and in newspapers can invite comments on issues set out in the invitation/notice. Examples include notices to business ratepayers on the draft budget/capital programme under Section 65 of the Local Government Act 1992; with neighbours/interested parties under Article 15 of the Town and Country Planning (Development Management Procedure) Order 2015 in respect of planning applications; and Regulation 38 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 in respect of review applications.
Participation in Overview and Scrutiny Reviews	Reviews undertaken by Overview and Scrutiny (including Task and Finish Groups) may include consultation with the local community, where appropriate, and/or representatives of community of other groups to inform their enquiries.
Ward Councillors	The Council will seek to consult with the relevant Ward Councillor(s) on issues that directly affect their ward. In particular, Article 7 of this Constitution (The Executive), sets out in section 3 consultation requirements with Ward Councillors.
Boards and Panels with various Partner Organisations: details of the specific Boards are set out in Table 2 below.	

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(March 2021) Part 2.29

Table 2

Board:	Role and Objectives	Partnership Stakeholders
<p><b>Community Safety &amp; Health &amp; Well-Being Board</b></p> <p>The Crime and Disorder Act came into force in July 1998 and required CDRPs (now known as CSP's) to be set up in each District in England and Wales. The Act placed an obligation on local authorities and the Police, (amongst others), to work together to develop and implement a strategy to tackle crime and disorder in the area.</p> <p>Under the Act and the subsequent Police Reform Act 2002, the named stakeholders have been designated “Responsible Authorities” and are held responsible for this work.</p> <p>To improve the health and well-being of the population of the District and reduce health inequalities.</p>	<p>The Tendring Community Safety Partnership has identified 4 key strategic themes to reduce crime and the fear of crime in the District and to improve community safety.</p> <p>These are:</p> <ol style="list-style-type: none"> <li>1. Tackling and Enforcement of ASB issues;</li> <li>2. To reduce harm to and safeguard vulnerable victims (including Children);</li> <li>3. Reducing Violence and Knife Crime</li> <li>4. Reduce youth offending and re-offending of adults and young people and thus support the overarching theme for Safer Essex.</li> </ol> <ol style="list-style-type: none"> <li>1. Provide strong and effective political and public leadership for health and well-being locally;</li> <li>2. Engage with the local population to better understand the health and well-being issues and needs in Tendring and ensure that this is captured in County and District needs assessments.</li> </ol>	<p>Tendring District Council</p> <p>Essex Police</p> <p>Essex County Council</p> <p>Police and Crime Commissioner</p> <p>Essex County Fire and Rescue Service</p> <p>Essex Community Rehabilitation Company</p> <p>National Probation Service</p> <p>North East Essex CCG</p> <p>and members of the voluntary sector</p> <p>Essex County Council (host authority)</p>

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Board:	Role and Objectives	Partnership Stakeholders
	<p>3. Through the JSNA and local stakeholder engagement, identify key priorities for health and local government commissioning and develop clear plans for using combined resources;</p> <p>4. Realise opportunities to engage with the Essex Health and Well-being Board work streams and other initiatives such as Community Budgets;</p> <p>5. Foster good engagement with the North East Essex Clinical Commissioning Group.</p> <p>6. Take an overview of the delivery of the strategic plans of the North East Essex CCG plan and the County Health and Well-being Strategy and identify the role other sectors, public, voluntary and private, could contribute;</p> <p>7. Monitor and review the implementation of the County Joint Health and Well-being Strategy locally.</p>	<p>Community Voluntary Sector</p> <p>Essex Carers</p> <p>Clinical Commissioning Group</p> <p>St Helena Hospice</p> <p>Job Centre Plus</p> <p>Health Watch</p> <p>Citizens Advice Bureau</p>

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ARTICLE 10 – COMMUNITY CONSULTATION & PARTICIPATION

Board:	Role and Objectives	Partnership Stakeholders
<p><b>Tendring Education Strategic Board (TESB)</b></p> <p>A strategic board with responsibility for supporting improvement in the quality of education and outcomes for children and young people across the Tendring District. The County and District Councils work collaboratively with schools and education partners to bring their collective effort and energy to address key priorities.</p>	<p>The purpose of the TESB is to:</p> <ul style="list-style-type: none"> <li>• Raise educational outcomes for the children and young people of Tendring</li> <li>• Positively impact on the wider society of Tendring through improvement of education</li> <li>• Influence other programmes to specifically support CYP and their families</li> <li>• Connect with other organisations to target funding and initiatives towards Tendring e.g. lottery funding, commissioned contracts</li> <li>• Identifying and delivering collective solutions which increase the consistency of best practice and offer for CYP in Tendring</li> </ul> <p>In order to meet the above, the board have targeted their focus on 3 key areas. The priorities which have been agreed by the TESB for 2020/21 academic year are:</p> <ol style="list-style-type: none"> <li>1. Recruitment of high-quality staff</li> <li>2. Retention of high-quality staff</li> <li>3. Improved Pupil Attendance and Engagement of Children, Young People and their Families</li> </ol> <p>There is also a sub-group working on the development of the Post 16 local offer who will report into the TESB as well as a regional/national barriers subgroup looking at solutions to any potential barriers within the locality.</p>	<p>TDC is the host authority</p> <p>Essex County Council (ECC Officer Chair of Board)</p> <p>Secondary school head teachers</p> <p>Representation from primary school head teachers</p> <p>Local Education Partners</p>

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Board:	Role and Objectives	Partnership Stakeholders
<p><b>Local Highways Panel</b></p> <p>Each District or Borough Council has a local Highways Panel set up with Essex County Council as a new way of working to improve highway amenities in each individual district using the County Council's local highway budget.</p>	<ul style="list-style-type: none"> <li>• Improve local highway amenities;</li> <li>• To consider proposed schemes and recommendations from the County Councillors elected to represent the District to the relevant County Council Portfolio Holder; but</li> <li>• Excluding the scheduled maintenance and improvement programme.</li> </ul>	<p>Membership of the Panel is made up of all 8 County Members representing Tendring, 4 District Councillors, and a Member of TDALC. ECC host the meeting.</p>
<p><b>Suffolk and North East Essex Integrated Care System (ICS)</b></p> <p>The ICS brings partners together in relation to health and care to join up provision and improve the health and well-being of the population.</p>	<p>Suffolk and North East Essex Integrated Care System (ICS) brings together the full spectrum of partners responsible for planning and delivering health and care across North East Essex; Ipswich and East Suffolk; and West Suffolk to ensure shared leadership and joint action to improve the health and well-being of the one million people who live locally.</p> <p>The ICS has a key role to ensure joint working across the NHS and local authorities to make shared commissioning decisions together with providers on how to use resources, design services and improve population health.</p> <p>The ICS seeks to improve the health and well-being of populations and reduce the health gap.</p> <p>The ICS outcomes are that everyone:</p> <ul style="list-style-type: none"> <li>- has a good start in life</li> <li>- is able to live a healthy a life as possible</li> <li>- has a good experience of ageing</li> </ul>	<p>NHS Commissioners</p> <p>NHS Provider Trusts</p> <p>Local Government including Tendring District Council and Essex County Council</p> <p>NHS regulators</p> <p>Primary Care – GPs, community pharmacists, optometrists and dentists, independent sector providers</p>

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Board:	Role and Objectives	Partnership Stakeholders
	<p>- has a good experience at the end of their life</p> <p>and in addition to meet the East of England ambition that everyone has an extra 3 years of healthy life by 2029.</p>	<p>Community and voluntary sector, public, patient and carer groups</p> <p>Education, research and police</p>
<p><b>North East Essex Health and Well-being Alliance</b></p> <p>The Alliance is a collaboration of commissioners, providers and other system partners working together as an integrated system to transform the health and well-being of the population of North East Essex</p>	<p>To support the Alliance vision of reducing inequality there is a focus on the wider determinants of health and a Live Well approach has been adopted to ensure communities are supported and empowered at each stage of their life.</p> <ul style="list-style-type: none"> <li>- Start Well – children and young people have the best start in life</li> <li>- Feel Well – people enjoy mental well-being</li> <li>- Be Well – adults are empowered to make healthy lifestyle choices</li> <li>- Age Well – people live safely and independently as they grow older</li> <li>- Stay Well – Adults with health or care concerns are supported to maintain healthy, productive and fulfilling lives</li> <li>- Die Well – individuals nearing the end of life have choice around their care</li> </ul> <p>Six neighbourhood teams will be developed across North East Essex including three in Tendring and each will have a multi-disciplinary</p>	<p>Anglian Community Enterprise (ACE)</p> <p>Colchester Borough Council</p> <p>Community 360</p> <p>Community Voluntary Services Tendring</p> <p>East of England Ambulance Service</p> <p>East Suffolk and North Essex NHS Foundation Trust</p> <p>Essex County Council</p>

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	<p>team empowered and supported to deliver the Live Well outcomes in their area.</p>	<p>Essex Partnership University NHS Foundation Trust</p> <p>Healthwatch</p> <p>North East Essex Clinical Commissioning Group</p> <p>St Helena Hospice</p> <p>Tendring District Council</p> <p>Virgin Care</p>
<p><b>Youth Strategy Group</b></p> <p>To act as local champions for young people's services within the District.</p> <p>To act as a consultative body to support the development of local provision, to provide guidance on the type and quality of provision as required in the District and influence the use of existing youth work resources.</p> <p>To act as a catalyst to draw together partners and key stakeholders to identify</p>	<p>To identify the needs of young people in their local area, in partnership with district/borough/city councils and other agencies to develop a joint strategy for addressing gaps in provision.</p> <p>For articulating the local needs of young people, to understand the current provision and to set priorities in order to avoid duplication and fill gaps.</p> <p>To identify and build relationships with the voluntary sector and/or private sector partners to attract new provision and funding opportunities to meet priorities and extend the offer to young people.</p> <p>To ensure that measures are in place to safeguard the financial probity of any projects, programmes or arrangements that the Group would enter into.</p> <p>To provide a local forum through which informed debate in relation to</p>	<p>The Group consist of agencies and organisations delivering services to young people within the age range 11-25 with a priority on those aged 13-19.</p> <p>In addition representatives from:</p> <ul style="list-style-type: none"> <li>• All local county councillors</li> <li>• 1 district cllr</li> <li>• 1 district officer</li> </ul>

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<p>priorities and delivery provision for young people.</p>	<p>services and support for young people can take place. To make recommendations to appropriate local agencies and commissioning boards about local service priorities. To inform how services for young people might be delivered and co-ordinated to avoid duplication. To consider and advise the relevant cabinet member on the use of local allocations of capital expenditure.</p>	<ul style="list-style-type: none"><li>• 1 Youth Service worker involved in local area delivery</li><li>• 3 young people: one Young Essex Assembly Member (YEA) and two other young people (aged between 13-19 years) who are service users and/or from the local community</li></ul>
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Board:	Role and Objectives	Partnership Stakeholders
<p><b>North East Essex Local Children’s Partnership Board (LCPB)</b></p> <p>Brings together partners at local level and is underpinned by the Children’s Act 2004 duty to co-operate (as amended). The purpose of the LCPB is for partners to work together to determine local needs, identify priorities and develop action plans to secure better outcomes for children and young people in the District/Borough.</p> <p>The LCPB is accountable to the Essex Children’s Partnership Board (ECPB). Undertaking its activity within the framework of the Essex Children and Young People’s Plan, reflecting the relevant Health and Well-Being Plan Priorities for children, young people and families.</p> <p>The LCPB engages with the local community, analysing and determining local need and informing the county wide Joint Strategic Needs Analysis and the Strategy of the ECPB. The LCPB</p>	<p>The primary aim of the LCPB is to improve the outcomes for children and young people in the area by:</p> <ul style="list-style-type: none"> <li>strengthening the services and processes that keep children and young people safe from neglect and abuse;</li> <li>developing an action plan within its overarching priorities which enables children and young people to aspire, learn, achieve highly and realise their potential;</li> <li>improving the life chances of Looked After Children, young carers and all other children and families at risk of poor outcomes;</li> <li>reducing the impact of poverty and recession on the lives of children, young people and their families thereby providing children, young people and families with opportunities to contribute meaningfully and be involved in the development and delivery of services in their local communities.</li> </ul> <p>The LCPB will ensure that a robust and effective relationship with the Essex Safeguarding Children’s Board exists through the local Stay Safe Group which is a sub group of, and accountable to, the LCPB, consulting with them on safeguarding issues and on the development of the local Stay Safe Plan.</p> <p>The LCPB will also ensure that there are appropriate links and</p>	<p>The LCPB will be made up of the leaders of local agencies and the Board may co-opt members as they see appropriate.</p> <p>Current membership is:</p> <p>NHS</p> <p>District Council</p> <p>Police</p> <p>LSP</p> <p>Job Centre Plus</p> <p>Voluntary – community sector</p> <p>Essex School Governors Association</p> <p>Education</p> <p>Essex County Council</p>

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Board:	Role and Objectives	Partnership Stakeholders
provides a local governance structure for integrated working practise and a local focus for collaboration.	reporting arrangements to other relevant local bodies and boards associated with District/Borough/City Councils, Education, Health and Social Care.	
<p><b>Tendring Independent Advisory Group (TIAG)</b></p> <p><b>Purpose of TIAG:</b></p> <p>To assist in the communication exchange between Essex Police and all Essex communities (Tendring), and provide independent advice to Essex Police to ensure a fair and non-discriminatory police service to all communities gaining their trust and confidence and promoting community cohesion.</p>	<ol style="list-style-type: none"> <li>1. Provide a channel for the exchange of information between the Police and diverse communities/groups of Essex (Tendring)</li> <li>2. Provide advice to Essex Police, in particular in the areas of:               <ul style="list-style-type: none"> <li>• Hate crime</li> <li>• Policing operations, critical and/or Major Incidents</li> <li>• Police training</li> <li>• Stop and Search</li> </ul> </li> <li>3. Share knowledge, awareness and experience of community issues, good practice and areas of development with the group</li> <li>4. Work at the direction of the Strategic IAG when required, in particular to provide advice and guidance to Essex Police on the development and introduction of policies and practices to ensure they do not exclude, discriminate or have an unjustifiable adverse impact on any community</li> <li>5. To assist Essex Police in developing their understanding of the needs and expectations of the diverse communities of Essex, as</li> </ol>	<p>Tendring District Council (Chair)</p> <p>Essex Police</p> <p>Voluntary and Community Groups</p> <p>Members of BAME communities</p> <p>Faith Groups</p>

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	<p>they relate to providing a fair and non-discriminatory police service</p> <p>A Critical Incident is defined as: “<b>any incident where the effectiveness of the Police response is likely to have a significant impact upon the confidence of the victim, their family, and/or the community</b>”.</p>	
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## ARTICLE 11 – JOINT ARRANGEMENTS

### 11.01 Legislation Requirements:

Any joint arrangements must be made in accordance with the current and relevant legislation. Any consideration to establish new arrangements must comply with the detailed requirements and be reflected within the decision.

### 11.02 Arrangements to Promote Well-Being:

The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:

- (a) Enter into arrangements or agreements with any person or body;
- (b) Co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) Exercise on behalf of that person or body any functions of that person or body.

### 11.03 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives/Cabinets to advise the Council on, or exercise Cabinet or Council functions in any of the participating authorities.
- (b) Except as set out below, the Cabinet may only appoint Cabinet Members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (c) The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstance:
  - The joint committee has functions for only part of the area of the authority. In such cases, the Cabinet may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area.

In this case the political balance requirements do not apply to such appointments.

- (d) Details of any joint arrangements including any delegations to joint committees are set out in the Council's Scheme of Delegations in Part 3 of this Constitution.

### 11.04 Access to Information

- (a) If all members of a joint committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.

- (b) If the joint committee contains members who are not on the Cabinet of any participating authority then the Access to Information Procedure Rules in Schedule 12A of the Local Government Act 1972 apply (as referred to in Part 5 of this Constitution).

**11.05 Delegation to and from Other Local Authorities**

- (a) The Council may delegate non-executive functions to another local authority.
- (b) The Cabinet may delegate executive functions to another local authority.
- (c) The decision whether to accept such a delegation from another local authority shall be reserved to the Council in relation to non-executive functions and the Cabinet in relation to executive functions.

**11.06 Contracting Out:**

The Council (for non-executive functions) and the Cabinet (for executive functions) may contract out to another body or organisation functions which may be exercised by an Officer. Such functions may be contracted out where they are subject to an Order under Section 70 of the Deregulation and Contracting Out Act 1994. This also applies under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

## ARTICLE 12 - OFFICERS

## 12.01 Management Structure

- (a) **General.** The full Council may engage such employees referred to as “Officers” as it considers necessary to carry out its functions.

Post	Main Functions and Areas of Responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers).</p> <p>Provision of professional advice to all parties in the decision making process and, together with the Monitoring Officer responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies as required by statute or by the Council.</p>
Deputy Chief Executive and Corporate Directors	<p>To contribute substantially to the vision and strategic management of the Council and the development of appropriate policies reflecting corporate aspirations.</p> <p>Provide corporate leadership and co-ordination as required of Council wide projects, cross-service initiatives and strategies.</p> <p>To influence the development of high quality services.</p> <p>To be accountable for the performance management of services within the remit of the post, through operational heads of service.</p> <p>To deputise for the Chief Executive.</p>

The above positions and such other positions as shall from time to time be deemed appropriate shall form the Council's Management Team. The Council's Chief Finance Officer (Section 151 Officer) and the Monitoring Officer have a standing invitation to attend Management Team in exercising their statutory roles.

**(b) Functions and Areas of Responsibility of the Council’s Management Team:**

The Management Team shall work with Councillors to develop and manage the Council's strategic direction and to ensure the delivery of agreed targets within the following service areas:

<b>Post</b>	<b>Services</b>	<b>Areas of responsibility including:</b>
<b>Chief Executive</b>	Leadership Support & Community	Locality Board Support and Community Leadership and Strategy.
	Governance and Legal	Corporate Governance & Legal Advice & Guidance, Service Legal Advice & Guidance, Corporate overview of the Council's compliance with RIPA.
	Democratic Services and Elections	Elections and Electoral Registration, Council, Cabinet and Committee administration, Overview and Scrutiny arrangements (including support to the Community Leadership and Resources and Services overview and scrutiny committees), Member Support, Corporate Complaints, Ombudsman Issues.
	Finance and Revenues and Benefits	Annual Budget Strategy, Budget Management, Accountancy, Exchequer, Insurance, Treasury Management and Banking, Internal Audit, Procurement Strategy and Central Purchasing, Administration of Council Tax and Housing Benefit, Business Rates (NNDR) and Reliefs. Local Council Tax Support Scheme, Cash Collection/Pay Point, Rent Collection and Benefit fraud and compliance.
	IT and Corporate Resilience	ICT Contract and Strategy, Network and Systems Support, Data Protection, Information Management, Key aspects of Organisational Transformation (including mobile and remote working and communications and IT, efficiency and effectiveness), Internet, Provision of Council wide Emergency Planning and Business Continuity, Freedom of Information (FOI) and Environmental Information Regulations (EIR) requirements.
Deputy Chief Executive & Corporate Director (Place and Economy)	Planning & Strategic Planning and Place	Strategic Planning Policy (including the Local Plan), Infrastructure Planning, Revitalising Town Centres, Transport and Digital Economy, Development Management, Local Land Charges, Building Control and planning pre-application advice (for all services including the setting of appropriate fees). Heritage and

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		conservation, trees and tree protection, general planning enforcement, Section 106 agreements and planning administration.
	Regeneration & Economic Growth	Strategic Regeneration, Economic Growth Strategy, Inward Investment, Business Support (employment and redevelopment), Town Centres Support Policy and Project Development, Funding Bids, Skills and Apprenticeships, Jaywick Team and Job Centre Plus Partnership.
	Sport and Leisure, Tourism, Heritage and Culture	Sports Centres and facilities (including in partnership with schools), Sports Initiatives and Sports Development, Princes Theatre Management, Arts, Entertainment, Culture and Heritage Initiatives and Events and Tourism Strategy, Events, Information and Promotion.
<b>Corporate Director (Operations &amp; Delivery)</b>	Public Realm	Seafronts, Beach Huts, Crematorium and Cemeteries, Horticultural Services, Open Spaces, Recreation Grounds, Children's Play Areas, Fleet Management and Vehicle Workshops. Off Street Car Parking Service, Traffic Regulation Orders, Public Conveniences, Strategic parking advice and on street functions as delegated by the Highways Authority and Neighbourhood activities.
	Climate Change, Environmental Health & Waste Management Services	Climate Change initiatives, Household Waste minimisation and collection, Recycling maximisation and collection, Street Cleansing, Dog Warden Service, Pest Control, Littering, Dog Fouling, Fly-tipping, Enforcement of Food Safety and Hygiene, Corporate Health and Safety, Water Safety/Quality, Pollution, Animal Welfare, Public Protection, Environmental Health, Abandoned Vehicles, Port Health, Unlawful Car Sales, Health Service Liaison, Health and Well-being, Community Health and Health Inequalities.
	Coastal Protection	Coast Protection – Planning and Major Schemes, Coast Protection Maintenance, Minor Engineering Works, Sewerage and land drainage and local highways and lighting function.
	Customer & Commercial	Customer Services, Careline Service, Provision, maintenance and development of CCTV systems, Out of Hours Service, Tenant Relations and Contact Centre, Telephony, Switchboard, Printing and Postal Services and Licensing.
	Housing	Financial Assistance for Private Sector Housing, Houses in Multiple Occupation, Private Sector Housing – regulation and improvement, Tenant Redress Scheme, Private Sector Housing conditions, enforcement and advice, Gypsy/Traveller Liaison, Home Energy Efficiency and Fuel Poverty and Housing Strategy and Development. Homelessness policy and advice and assistance to persons homeless and in housing need, Housing Allocation Scheme, Sheltered Housing, Estates Management,

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		Housing Revenue Account and Business Plan, Right to Buy and other Housing Revenue Account disposals, partnership with Registered Providers, enable new opportunities to address housing need through partnership working and Disability Facilities Grant regime.
	Building and Engineering	Organisational Transformation (including efficiency and effectiveness, shared working, office use, IT and Customer Services), Housing Investment Programme, Dangerous Structures, Buildings advisory service, Council Office and Buildings Policy, including Facilities Management and Maintenance, Depots, Office Cleaning. Housing Revenue Account and Business Plan and Engineering Services.
	Property and Asset Management	Leading Organisational Transformation (including efficiency and effectiveness, shared working, office rationalisation programme to invest in fewer, better buildings, IT and Customer Services), Overview and formulation of Assets Strategy and Policy, Assets Service providing property advice and support to service areas and initiation and determination of Property matters.
	People, Performance and Projects	Management of strategic and corporate HR function and workforce development, Organisational Development, Public Service Forum, Corporate Strategy and Planning, Performance Management, Intranet, Career Track, Communications (Internal and external), Skills and Apprenticeships, Communities of Interest (Children and Young People), Education, Community Engagement, Development and Empowerment (including advice and relationships with Public and Third Sector Organisations), Community Safety,

**(c) Head of Paid Service, Monitoring Officer and Chief Financial Officer (Section 151 Officer):**

The Council has designated the following posts to fulfil a specific statutory position as shown:

<b>Designation</b>	<b>Post</b>
Head of Paid Service	Chief Executive
Monitoring Officer	Assistant Director (Governance)
Chief Financial Officer (section 151 Officer)	Assistant Director (Finance and IT)

These posts will have the functions described in paragraphs 12.02-12.05 below.

**(d) Scrutiny Officer**

The Council has designated the post of Head of Democratic Services and Elections to fulfil the role of the Council's Scrutiny Officer. The role is to:

- promote the role of the Council's overview and scrutiny committees;
- provide support to those committees and its members; and
- provide support and guidance to Members and Officers relating to the functions of the overview and scrutiny committees.

**12.02 Functions of the Head of Paid Service****(a) Discharge of functions by the Council:**

The Head of Paid Service will report to the full Council, whenever they consider it appropriate, on how the Council's functions are discharged, the number and grade of Officers required to discharge the functions and how Officers are organised into an overall Officer structure.

**(b) Restrictions on functions:**



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The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Financial Officer (Section 151 Officer) if an appropriately qualified accountant.

**(c) Structure:**

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers, which is included within Part 8 of this Constitution.

### 12.03 Functions of the Monitoring Officer

**(a) Ensuring lawfulness and fairness of decision making:**

After consulting with the Head of Paid Service and the Chief Financial Officer (Section 151 Officer), the Monitoring Officer will report to the Council, or to the Cabinet in relation to an executive function, if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

**(b) Supporting the Standards Committee:**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee and its Sub-Committee.

**(c) Advising whether executive decisions are within the Budget and Policy Framework:**

The Monitoring Officer will advise whether decisions of the Executive are in accordance with the Budget and Policy Framework.

**(d) Providing Advice:**

The Monitoring Officer will provide advice to all Councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, Budget and Policy Framework issues. The Chief Financial Officer (Section 151 Officer) has similar responsibilities.

**(e) Record Keeping:**

Responsibility for a system of record keeping for all of the Council's business.

**(f) Proper Officer for Access to Information:**

Ensuring that Cabinet decisions together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

**(g) Maintaining the Constitution:**

Maintaining an up-to-date version of the Constitution on the Council's website and ensuring that it is widely available for consultation by Members, staff and the public.

**(h) Restrictions on Posts:**

The Monitoring Officer cannot be the Chief Financial Officer (Section 151 Officer) or the Head of Paid Service.

**12.04 Functions of the Chief Financial Officer (Section 151 Officer)**

**(a) Ensuring lawfulness and financial prudence of decision making:**

After consulting with the Head of Paid Service, appropriate Corporate Directors and the Monitoring Officer, the Chief Financial Officer (Section 151 Officer) will report to the Council, or to the Cabinet in relation to an executive function, and the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

**(b) Administration of financial affairs:**

The Chief Financial Officer will have responsibility for the administration of all the financial affairs of the Council.

**(c) Contributing to corporate management:**

The Chief Financial Officer (Section 151 Officer) will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

**(d) Providing advice;**

The Chief Financial Officer (Section 151 Officer) will provide advice to all Councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all Councillors and will support and advise Councillors and officers in their respective roles. The Monitoring Officer has similar responsibilities.

**(e) Give financial information:**

The Chief Financial Officer (Section 151 Officer) will provide financial information to the media, members of the public and the community.

**(f) Internal Audit:**

The Chief Financial Officer (Section 151 Officer) will have responsibility for the provision of an effective internal audit function and support the Audit Committee.

**12.05 Duty to Provide Sufficient Resources to the Head of Paid Service, Monitoring Officer and Chief Financial Officer**

The Council will provide the Head of Paid Service, Monitoring Officer and Chief Financial Officer (Section 151 Officer) with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

**12.06 Conduct**

Officers will comply with the Employees' Code of Conduct and Protocol on Member/Officer Relations as set out in Part 6 of this Constitution.

**12.07 Employment**

The recruitment, selection and dismissal of Officers will comply with the Scheme of Delegation and Officer Employment Rules set out in Part 5 of this Constitution.

## ARTICLE 13 – DECISION MAKING

### 13.01 Responsibility for Decision Making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas of functions. This record is set out in Part 3 of this Constitution. The Council's Monitoring Officer will also retain a central record of delegations by the Chief Executive, the Corporate Directors and Assistant Directors providing authority within their respective service areas of responsibility.

### 13.02 Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consideration of all the relevant factors and options, taking into account the results of any consultation undertaken and the professional advice of Officers;
- (c) Respect for human rights, and equality and diversity;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes; and
- (f) Transparency (i.e. explaining what options were considered and giving the reasons for that decision).

### 13.03 Key Decisions

A "key decision" means an executive decision that is likely to –

- result in the local authority incurring expenditure which is, or the making of savings which are in excess of, £100,000 or is significant having regard to the local authority's budget for the service or function to which the decision relates; or
- be significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.

The definition of a key decision will be reviewed as part of the compilation and approval of the Council's Governance Statement by the Audit Committee. That Committee will submit any recommendations as to amending that definition to the Portfolio Holder with responsibility for the Constitution.

A decision-taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Article 7 of this Constitution and the Access to Information Procedure Rules.

Where an executive decision has been taken on a matter and that decision was treated as a key decision and made in accordance with the requirements of the Constitution then any further executive decision regarding that matter that purports to enact all or part of the requirements of that original decision need not be treated as a key decision.

#### **13.04 Decision making by Council, Cabinet, Overview and Scrutiny Committees, Other Committees and Sub-Committees**

All decisions will follow the general principles contained within this Article. In addition, decision-makers will follow the relevant procedure rules, as set out in Part 5 or Article 7, as appropriate when considering the matter.

The Chief Executive, Chief Financial Officer and Monitoring Officer have the right to attend, speak on an item of business, provide representations and present a report to discharge their statutory and constitutional duties whenever necessary. In such instances, the decision making body will give due regard to the relevant advice provided. The decision and minutes of the meeting will record the advice, how it was taken into account and reasons for any departure.

#### **13.05 Decision Making by Council Bodies Acting as Tribunals**

The Council, a Councillor or an Officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations, or the criminal responsibility, of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial as contained in Article 6 of the European Convention on Human Rights.

**ARTICLE 14 – FINANCE, CONTRACTS AND LEGAL MATTERS**

**14.01 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules as set out in Part 5 of this Constitution.

**14.02 Contracts**

Every contract made by the Council will comply with the Procurement Procedure Rules as set out in Part 5 of this Constitution and any guidance issued by the Monitoring Officer.

**14.03 Legal Proceedings**

The Corporate Directors, in consultation with the Assistant Director (Governance), are authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to the decisions of the Council, or in any case where they and the Assistant Director (Governance) consider that such action is necessary to protect the Council's interests.

**14.04 Authentication of Documents**

Where any document is necessary in any legal procedure or proceedings on behalf of the Council, it will be signed by Assistant Director (Governance) or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract with a value up to £10,000, entered into on behalf of the Council, shall be recorded through the Council's official order system and in accordance with Section 6 of the Procurement Procedure Rules, subject to any emergency requirement agreed with the Chief Financial Officer.

Any contract with a value of £10,000 to £50,000, entered into on behalf of the Council shall be in writing and in accordance with Section 5 of the Procurement Procedure Rules. Such contracts must be signed by at least two Officers of the Authority authorised by the Chief Executive.

Any contract with a value in excess of £50,000 must be made in writing and under the Common Seal of the Council attested by at least one Proper Officer and in accordance with Section 5.

**14.05 Common Seal of the Council**

- (a) The Common Seal of the Council will be kept in a safe place under the control of the Assistant Director (Governance).

- (b) Authority for using the Common Seal of the Council is provided by:
- (i) A decision of the Council, Cabinet, a member of the Executive, a Committee or a Sub-Committee; or
  - (ii) A (duly authorised) Officer's Decision recording:
    - Entering into a Contract with a value exceeding £50,000 and/or
    - Issuing certificates for corporate award schemes.
  - (iii) Any other documents which should be sealed in the opinion of the Assistant Director (Governance) including (but not limited to):
    - Leases and transfers;
    - Licences to Assign;
    - Deeds and Agreements (property related)
    - Byelaws;
    - Miscellaneous Orders (such as Tree Preservation Orders or Traffic/Road Orders);
    - Legal Charges in the Council's favour on private properties (including secure repayment of local loans).

The affixing of the Common Seal will be attested by the Assistant Director (Governance) or some other person authorised by them.

The Assistant Director (Governance) is authorised to amend these documents listed in 14.05(b)(iii), if permitted by law and it is considered necessary to do so as a result of urgent requirements and circumstances restricting access to the Council offices.

**ARTICLE 15 – REVIEW AND REVISION OF THE CONSTITUTION**

**15.01 Duty to Monitor and Review the Constitution**

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. The Monitoring Officer will make an annual assessment of the Constitution to identify any weaknesses or improvements in its operation and make recommendations for ways in which it could be amended in order to better achieve its purpose.

**15.02 Changes to the Constitution**

- (a) Any proposals for changes to the Constitution arising from a review of the Constitution, whether it be initiated by the Monitoring Officer or a resolution by a member body, will be reported to the Cabinet, via the Portfolio Holder with responsibility for corporate governance, which in turn will make recommendations to the Council.
- (b) The Monitoring Officer shall have authority to make minor changes to the Constitution arising from:
  - new legislation;
  - changes to the organisational structure of the Council;
  - decisions of the Council or Cabinet; or
  - in exercise of the Leader's authority to make changes to Cabinet responsibilities.
- (c) Subject to (d) below, changes to the Constitution will be approved by the Council only after consideration of a proposal by the Monitoring Officer and the Cabinet.
- (d) Matters affecting the Cabinet shall be approved by the Cabinet or Leader of the Council.
- (e) The Council must comply with regulations made under Section 30 of the Local Government Act 2000, and guidance issued from time to time by the Secretary of State under Section 38, and take reasonable steps to consult with local electors and other interested persons in the area when drawing up any proposals to change from a Leader and Cabinet Executive arrangements to one of the alternative forms permitted by the Local Government Act 2000 or vice versa.



**ARTICLE 16 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION**

**16.01 Suspension of the Constitution**

**(a) Limit to suspension:**

The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by Council to the extent permitted within those Rules and the law.

**(b) Procedure to suspend:**

A motion to suspend any rules can only be made without notice, if at least 36 Members of the Council are present and will not be carried unless 24 Members vote in favour of suspension. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution as set out in Article 1.

**(c) Rules capable of suspension:**

- Council Procedure Rules
- Budget and Policy Framework Procedure Rules
- Financial Procedure Rules
- Procurement Procedure Rules

**16.02 Interpretation**

The ruling of the Chairman of the Council (or other person presiding) as to the interpretation or application of this Constitution, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1 and the advice of the Monitoring Officer.

**16.03 Publication**

- (a) The Committee Services Manager will give a printed copy of the Members' Handbook, including various parts of this Constitution to each Member of the authority upon delivery of that individual's declaration of acceptance of office on the Member first being elected to the Council.
- (b) The Committee Services Manager will ensure that completed and updated copies are available for inspection at appropriate locations and on the Council's website, and can be purchased by members of the public or local press on payment of a reasonable fee.

## **Part 3**

# **Responsibility of Functions**

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## **Scheme of Delegated Powers**

# RESPONSIBILITY FOR FUNCTIONS

## DELEGATED POWERS

### GENERAL

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) give effect to section 13 of the Local Government Act 2000 by specifying:-

- (a) which functions are not to be the responsibility of the Executive (Cabinet), as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and as detailed in the Appendix to this part of the Constitution;
- (b) functions which may (but need not) be the responsibility of the Executive (Cabinet) (local choice functions); and
- (c) which are to some extent the responsibility of the Executive.

All other functions not so specified are to be the responsibility of the Executive.

**Every decision of the Cabinet, a Portfolio Holder, Committee, Sub-Committee, Working Party or Officer under delegated powers shall comply with the Council's Constitution and in particular with its Budget and Policy Framework, Council Procedure Rules, Financial Procedure Rules and Procurement Procedure Rules and any expenditure involved is subject to such compliance.**

#### 1. RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

Local Choice functions are those, which may (but need not) be the responsibility of the Cabinet. Schedule 1 of Part 3 of the Constitution details the responsibility for those local choice functions as set out in Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as determined by the Council.

#### 2. RESPONSIBILITY FOR COUNCIL (NON-EXECUTIVE) FUNCTIONS

The roles and responsibilities of full Council are set out in Article 4 of the Constitution. The specific functions set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which are retained for determination by full Council are set out in Schedule 2.

The full Council has established those non-executive committees as set out in Schedule 2 of this Part of the Constitution to discharge those functions, which are not to be the responsibility of the Executive, as set out in the Local Authorities (Functions and Responsibilities) (England)

Regulations 2000 and the Appendix to Part 3 of the Constitution. Decisions relating to these functions shall be made in one of the following ways:

- (a) By one of the non-executive Committees listed in Schedule 2 of this Part 3 of the Constitution;
- (b) By Officers, in consultation with a Member, in accordance with the Scheme of Delegation to Officers;
- (c) By Officers; or
- (d) Where any matter involves amendment to the Budget and Policy Framework, by the Council following receipt of advice from the relevant non-executive Committee and the Cabinet.

Schedule 2 sets out the arrangements for delegation of non-executive functions to the above.

### **3. RESPONSIBILITY FOR EXECUTIVE (CABINET) FUNCTIONS**

The Cabinet is responsible for making all decisions within the Budget and Policy Framework set by full Council, except for decisions in connection with those matters, which cannot be the responsibility of Cabinet as specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Details of the overall responsibilities of the Cabinet are set out in Schedule 3 of Part 3 of the Constitution. Decisions in respect of executive functions shall be made in one of the following ways:

- (a) the Cabinet collectively, at public meetings;
- (b) By an individual Member of the Cabinet (Portfolio Holder), within their areas of responsibility and delegated powers;
- (c) An Officer, in consultation with a Portfolio Holder;
- (d) An Officer, or
- (e) Where the decision is outside the Budget and Policy Framework, by full Council following receipt of advice from the Cabinet collectively.

Schedule 3 sets out the arrangements for delegation of executive functions to the above.

### **4. OVERVIEW AND SCRUTINY FUNCTIONS**

The functions of the Council's overview and scrutiny function are set out in Article 6 of the Constitution.

# Schedule 1

## Responsibility for

### LOCAL CHOICE FUNCTIONS

Local Choice Functions are those functions, which may (but need not) be the responsibility of the Executive (the Cabinet). The table below details the responsibility for local choice functions, as determined by the Council.

Function	Decision Making Body	Delegation of the Function
1. Any function under a local Act, other than a function specified under Regulation 2 or Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.	Council	
2. The determination of an appeal against any decision made by or on behalf of the authority	Council	The relevant non-executive Committee, unless expressly specified within the terms of reference elsewhere.
3. The conduct of best value reviews in accordance with the provisions of any order for the time being having effect under Section 5 of the Local Government Act 1999.	The relevant Overview and Scrutiny Committee	
4. Any function relating to contaminated land	Council	Licensing and Registration Committee and further delegation to Corporate Director (Operations and Delivery)
5. The service of an abatement notice in respect of a statutory nuisance	Council	Licensing and Registration Committee and further delegation to Corporate Director (Operations and Delivery)
6. The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 shall apply in the authority's area	Council	Licensing and Registration Committee

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Part 3.3

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7. Any function under a local Act, other than a function specified under Regulation 2 or Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000	Council	Licensing and Registration Committee and further delegation to Corporate Director (Operations and Delivery)
8. The investigation of any complaint as to the existence of a statutory nuisance	Council	Licensing and Registration Committee and further delegation to Corporate Director (Operations and Delivery)
9. The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land	Council	Deputy Chief Executive & Corporate Director (Place and Economy)
10. The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Council	Chief Executive and All-Corporate Directors
11. The appointment of any individual –  (a) to any office other than an office in which they are 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 the revocation of any such appointment.	Council	Chief Executive
12. The making of agreements with other local authorities for the placing of staff at the disposal of those authorities	Council	Chief Executive

# Schedule 2

## Responsibility for Council (Non-Executive) Functions

### GENERAL MATTERS/PRINCIPLES

Detailed below are the general matters/principles which underpin the Council's scheme of delegation in respect of non-executive functions.

1. The Council is responsible for determining the scheme of delegation for all non-executive functions.
2. Powers and duties of Non-Executive Committees are subject to the general instructions which contain the framework within which such delegations must be exercised as follows:-
  - (a) Performed on behalf of and in the name of the Council;
  - (b) Within their areas of responsibility and limits as set out in the Constitution subject to the action being within the Council's Budget and Policy Framework;
  - (c) Subject to the directions of the Council and of the Cabinet or Non-Executive Committee as appropriate;
  - (d) Subject to powers and duties reserved for confirmation by the Council;
  - (e) In accordance with the Council's Financial Procedure Rules and Procurement Procedure Rules;
  - (f) Delegate, as appropriate, matters to:
    - (i) a Sub-Committee or panel;
    - (ii) to an Officer in consultation with the Chairman or Vice-Chairman of a Committee, Sub-Committee or panel, as appropriate; or
    - (iii) an Officer.
3. Non-Executive Committees have the power to discharge those functions within their areas of responsibility, with the exception of decision-making reserved to full Council.
4. The tables within this Schedule detail functions retained for discharge by full Council and which of the Council's Committees are responsible for discharging those functions, set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) which are relevant to the functions of Tendring District Council, that cannot be the responsibility of the Council's Executive (the Cabinet) and the Appendix to Part 3 of the Constitution. These tables also identify those functions which have been delegated to Officers.

5. The Council may by resolution at any time vary, enlarge, restrict, or reduce any non-executive function, power or duty referred to a Committee, Sub-Committee or Officer.
6. The Chief Executive is authorised to deal with any matter on exceptional grounds of urgency, following consultation with the Leader of the Council or Deputy, the Chairman and Vice-Chairman of the appropriate Committee in respect of non-executive matters.
7. The delegation of powers to Officers is underpinned by the principle and culture of consultation and liaison with Members, as appropriate and the ability for Officers to refer matters to the relevant decision making body, where it is felt that this is appropriate due to the nature of an issue.
8. The express authorisations to Officers set out in this Schedule are in addition to the normally accepted powers and duties of Officers to deal with matters of routine occurrence falling within the scope of their departmental responsibilities as set out in Article 12 which includes all present and future legislation related to the functions of the service and nothing in this Schedule shall derogate from any statutory powers or duties conferred or imposed directly on an Officer of the Council.
9. In cases where matters are delegated to Officers, but must also be discharged in consultation with the Chairman of the relevant Committee, and in cases where the Chairman is not available, the Vice-Chairman of the Committee is to be consulted. In instances, where there is disagreement between the Officer and the Chairman the matter should be reported to a meeting of the relevant Committee for consideration and determination. Furthermore, an Officer with delegated powers to discharge a function, or the Member being consulted has the option to refer the matter to a meeting of the relevant Committee for determination where this is felt to be necessary and/or appropriate.
10. All delegations to Officers are made to the Corporate Directors, unless expressly indicated otherwise. Any Corporate Director is empowered to exercise any of the powers of another Corporate Director, where this is necessary, subject to the provisions set out in paragraph 13.
11. The Corporate Directors are Designated Officers for the purposes of legislation within their respective service areas as set out in Part 8 of the Constitution and have the power to authorise other Officers of the authority, as Designated Officers and authorised persons for purposes, relating to present and future legislation falling within their areas of responsibility.
12. Any authority granted to the Chief Executive or a Corporate Director, unless otherwise indicated, may be exercised by an officer with appropriate qualifications authorised by a Corporate Director in writing for that purpose. The relevant Corporate Director will maintain a record of such authorisations, a central record of which will be kept by the Monitoring Officer and available for inspection.
13. Any authority which under statute or best practice guidance should only be discharged by Officers with a specific level of qualification must only be conferred to and discharged by such Officers. Furthermore, where the matter relates to a statutory power or duty conferred or imposed directly on an officer of the Council, only that Officer may discharge the function.
14. The Chief Executive has authority to exercise any function delegated to Officers, except where an Officer with appropriate qualifications must only discharge such a delegation or where the



matter relates to a statutory power or duty conferred or imposed directly on an Officer of the Council.

15. The Monitoring Officer shall:-
  - (i) Determine any conflict between any two or more Officers acting under any authorisation; and
  - (ii) In any case of uncertainty, and having considered relevant legislation, determine whether any matter falls within the remit of the Council, the Cabinet, a Committee or an Officer of the Council.
16. In the event of a change to the corporate structure of the Council, the responsibility for issues delegated to each Corporate Director shall be amended accordingly and will take immediate effect. The relevant amendments to this scheme of delegation should be made in the Constitution as soon as possible.
17. All Corporate Directors are authorised in consultation with the Assistant Director (Governance) to take all steps in connection with any legal proceedings, in respect of any function under the jurisdiction of a Portfolio Holder including the commencement or defence of, withdrawal, settlement or compromise of any such proceedings.
18. All Corporate Directors are authorised in consultation with the Assistant Director (Governance) to appear on the Council's behalf in any legal proceedings, under the jurisdiction of a Portfolio Holder, before all courts, tribunals and inquiries.

<b>RESPONSIBILITY FOR COUNCIL – NON EXECUTIVE FUNCTIONS</b>		
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Full Council</b>	<p>Those functions retained for responsibility by Full Council as set out in Article 4 of the Constitution and the following specific functions as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.</p> <p><b>D. Discharge the following Functions relating to Elections:</b></p> <ul style="list-style-type: none"> <li>• Duty to appoint an Electoral Registration Officer</li> <li>• Power to dissolve Parish Councils</li> <li>• Power to make orders for grouping parishes, dissolving groups and separating parishes from groups</li> <li>• Duty to appoint Returning Officer for local government elections</li> <li>• Power to fill vacancies in the event of insufficient nominations</li> <li>• Power to submit proposals to Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000</li> <li>• Duty to consult on change of scheme for elections and associated powers under the Local Government Public Involvement and Health Act 2007</li> </ul>	<p><b>Chief Executive in consultation with the Council Chairman:</b></p> <ol style="list-style-type: none"> <li>1. Agreeing the scale of fees payable at elections at District and Parish Councils, referenda and Parish Polls.</li> </ol> <p><b>Chief Executive:</b></p> <ol style="list-style-type: none"> <li>1. Returning Officer at Local Elections</li> <li>2. Power to assign Officers in relation to requisitions of the Registration Officer.</li> <li>3. To divide constituency, electoral divisions and wards into polling districts and designate their polling places</li> <li>4. Powers in respect of holding of elections</li> <li>5. Power to pay expenses properly incurred by Electoral Registration Officers</li> <li>6. Duty to declare vacancy in office in certain cases</li> </ol>

	<p><b>E. The discharge of the following functions relating to the Name and Status of Areas</b></p> <ul style="list-style-type: none"> <li>• Power to change the name of the district or parish</li> <li>• Power to petition for a charter to confer borough status</li> </ul> <p><b>EB. Discharge the Duties, Functions and Powers relating to Community Governance</b></p> <p><b>F. Power to Amend, Revoke or Re-enact Byelaws</b></p> <p><b>G. Power to Promote or Oppose Local or Personal Bills</b></p> <p><b>Discharge of the following miscellaneous functions – Part II:</b></p> <ul style="list-style-type: none"> <li>• Power to make standing orders (this includes amendments to the Constitution)</li> <li>• Power to make standing orders as to contracts</li> <li>• Duty to make arrangements for the proper administration of financial affairs</li> <li>• Power to appoint Officers for particular purposes (appointment of “Proper Officers”)</li> <li>• Duty to designate Officer as the head of the authority’s Paid Service, and to provide staff, etc.</li> <li>• Duty to designate Officer as the Monitoring Officer, and to provide staff, etc.</li> <li>• Duty to provide staff etc. to person nominated by Monitoring Officer</li> <li>• Power to make payments or provide other benefits in cases of maladministration</li> </ul> <p><b>Other matters</b></p> <p>Those as set out in Article 4 of the Constitution together with:</p> <ul style="list-style-type: none"> <li>• Prepare and approve a Pay Policy Statement for the financial year in accordance with Chapter 8 of the Localism Act 2011.</li> </ul>	<p>7. Duty to give public notice of a casual vacancy</p> <p>8. Power to make temporary appointments to parish councils</p> <p>9. Regrading posts, restructuring and determining staff levels (except where Section 4 of the Local Government Act 1989 applies and it is appropriate for the full Council to consider any proposals of the Head of Paid Service in this regard)</p> <p>10. Power to authorise compensation payments up to a maximum of £5,000 as a result of Local Governance &amp; Social Care Ombudsman or Housing Ombudsman recommendations or by virtue of the Corporate Complaints Procedure</p> <p><b>Chief Executive or Monitoring Officer:</b></p> <p>1. The Proper Officer before whom a Member’s formal Declaration of Acceptance of Office may be made.</p> <p>2. The appointment or removal of any individual to/from a Committee, Sub-Committee, panel or working party at the request of the relevant Group Leader.</p> <p>3. The advertisement of vacancies for the position of Independent</p>
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	<ul style="list-style-type: none"> <li>• The appointment of the Chief Executive</li> <li>• On the recommendation of the Human Resources and Council Tax Committee: <ul style="list-style-type: none"> <li>(a) the dismissal including redundancy, in accordance with the statutory provisions, of the Chief Executive, Chief Finance Officer or Monitoring Officer (following the outcome of an Independent Panel)</li> <li>(b) The voluntary early retirement and voluntary redundancy of the Chief Executive</li> <li>(c) The retirement on grounds of ill health of the Chief Executive on the recommendation of the Council's medical advisor</li> <li>(d) the terms and conditions of the Chief Executive</li> </ul> </li> </ul>	
Committee	Functions and Terms of Reference	Delegated Functions
<b>Audit Committee</b>	<p><i>The discharge of the following <b>miscellaneous functions – Part II</b> as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities Regulations) (England) 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.</i></p> <p><b>Duty to approve the authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be).</b></p> <p><b>Additional roles and functions of the Committee are as set out below:</b></p> <ol style="list-style-type: none"> <li>1. To provide independent assurance of the adequacy of the risk management framework and the associated control environment;</li> <li>2. To provide independent scrutiny of the Council's financial and non-financial performance to the extent that it affects the Council's exposure to risk and weakens the control environment;</li> <li>3. Considers the annual budget for the internal audit service as part of the Council's budget setting process; and</li> <li>4. To oversee the financial reporting process:</li> </ol> <p><b>Audit Activity</b></p> <ol style="list-style-type: none"> <li>1. Considering the Internal Audit Manager's annual report and opinion and a</li> </ol>	<p><b>Section 151 Officer and Internal Audit Manager</b></p> <p>The provision of advice and support to the Audit Committee on all aspects of its functions and duties</p>

	<p>summary of internal audit activity (actual and proposed), and the level of assurance it can give over the Council's corporate governance arrangements.</p> <ol style="list-style-type: none"> <li>2. Considering reports on the operation of internal audit and summaries of specific internal audit reports where requested.</li> <li>3. Considering reports from internal audit on agreed recommendations not implemented within a reasonable timescale.</li> <li>4. Assessing external auditor and external regulatory reports and monitoring any quality improvement programmes where required. Comments are provided to Cabinet as appropriate.</li> <li>5. Commenting on the scope and depth of external audit work and ensuring it gives value for money.</li> <li>6. Liaising with the Audit Commission in regard to the appointment of the Council's external auditor.</li> </ol> <p><b>Regulatory Framework</b></p> <ol style="list-style-type: none"> <li>7. Reviewing significant issues referred by the Chief Executive, Cabinet or any Council Committee (subject to the availability of resources within the approved audit plan).</li> <li>8. Monitoring the effective development and operation of risk management and corporate governance.</li> <li>9. Monitoring Council policies on "Raising Concerns at Work", the whistleblowing policy and the anti-fraud and corruption strategy.</li> <li>10. Overseeing the production of the Code of Corporate Governance, including the Statement of Internal Control.</li> <li>11. Considering the arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice.</li> <li>12. Considering the Council's compliance with its own and other published standards and controls (other than those covered by the Standards Committee).</li> </ol>	
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	<p><b>Accounts</b></p> <p>13. Reviewing and approving the annual statement of accounts.</p> <p>14. Considering whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.</p> <p>15. Receiving the external auditor's report to those charged with governance.</p>	
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Planning Policy and Local Plan Committee</b>	<p>To exercise the Council's functions relating to overseeing the preparation of the Local Plan* and ensuring it meets the "tests of soundness" from national and planning policy.</p> <p>The exercise of the Council's functions, powers and duties in relation to the following:</p> <ol style="list-style-type: none"> <li>1. To oversee the preparation of the new Tendring District Local Plan* to ensure that it meets the "tests of soundness" set out in the National Planning Policy Framework.</li> <li>2. To ensure that the Local Plan* is "positively prepared", based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.</li> <li>3. To ensure the Local Plan* is "justified", promoting the most appropriate strategy for growth, when considered against reasonable alternatives, based on proportionate evidence.</li> <li>4. To ensure that the Local Plan* is "effective", being deliverable over the plan period and based on effective joint working on cross-boundary strategic priorities.</li> </ol>	

	<ol style="list-style-type: none"> <li>5. To ensure that the Local Plan* is “consistent with national policy” enabling the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework.</li> <li>6. To ensure that the Council effectively complies with the statutory duty to co-operate.</li> <li>7. To consider and recommend the content of the Local Plan*, in consultation with the Cabinet, for consideration and formal approval by Full Council for either public consultation (preferred options or pre-submission versions), submissions to the Secretary of State (to be examined by a Planning Inspector), or final adoption (following receipt of the Planning Inspector’s report).</li> <li>8. To recommend Supplementary Planning Documents (SPDs) and other planning documents to Cabinet for public consultation and final adoption.</li> <li>9. To approve the preparation, commissioning and subsequent publication of studies, surveys and other technical documents that form part of the “evidence base” needed to justify the content of the Local Plan*, Supplementary Planning Documents (SPDs) and other planning documents.</li> <li>10. To scrutinise, note and understand the recommendations and conclusions of the “evidence base” to ensure that it provides a robust platform upon which to base policies and proposals in the Local Plan*, SPDs and other planning documents.</li> <li>11. To approve the publication of the Annual Monitoring Report (AMR) each year and to consider whether or not it highlights development trends that may or may not require changes to policies or proposals in the Local Plan*, SPDs or other planning documents.</li> <li>12. To consider representations submitted in response to public consultation exercises on the Local Plan*, SPDs or other planning documents and consider the need for any changes</li> </ol>	
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	<p>to these documents in response to any issues that they raise.</p> <p>13. Approve the work programme required for the Committee to undertake its functions effectively and in a timely manner.</p> <p>14. Refer to Cabinet any recommendations in respect of the Council's overall strategy, policies and guidance, where functions are the responsibility of the Cabinet, such as Supplementary Planning Documents.</p> <p>15. Approve for recommendation of non-statutory planning policy and guidance to be considered by the Council, the Planning Committee, Cabinet (for executive functions), officers in the discharge of its statutory planning functions, including (but not limited to) avoiding detriment to local neighbourhoods (as long as they are not contrary to the National Planning Policy Framework).</p> <p><i>*The Local Plan can consist of one or more "Development Plan Documents" which could include one document for the majority of the Tendring District and a separate document, if necessary, prepared jointly with Colchester Borough Council, for any major development crossing the Tendring/Colchester border</i></p>	
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Committee	Functions and Terms of Reference	Delegated Functions
<p><b>Planning Committee</b></p>	<p><i>The discharge of the Town and Country Planning and Conservation functions as specific in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.</i></p> <p>Additional roles and functions of the Committee are as set out below:</p> <p>1. Any formal comment or view on applications or proposals to be determined by Essex County Council, any Statutory Body and government departments relating to matters within the remit of the Committee.</p>	<p>All planning and conservation matters delegated to the Assistant Director (Planning) except in relation to the determination of certain planning applications as detailed below for determination by the Committee:</p> <p>(i) Officer recommendations for approval materially contrary to national or local policy.</p> <p>(ii) Officer recommendation of approval contrary to a previous refusal by the Planning Committee, where the policies remain substantially unchanged.</p> <p>(iii) Office recommendation of approval and the application should be referred to the Secretary of State under a Direction(s) or “call in”.</p> <p>(iv) The applicant is the Council or someone acting as applicant on the Council’s behalf or in respect of Council owned land.</p> <p>(v) The applicant is a Member of the Council, Planning Officer or a Senior Officer and there is an Officer recommendation for approval.</p>

		<p>(vi) Within 35 days of the commencement of formal consultation, a written request is received from a Tendring District Councillor in accordance with the Member Referral Scheme(*) requesting that the application should be brought before the Planning Committee for determination giving material planning reasons for that request.</p> <p>(*) Scheme to be approved by Full Council</p> <p>(vii) Any application which the Assistant Director (Planning) in their professional opinion, taking into account the written representations received, plans and policies and other material considerations to be referred to the Planning Committee because it raises more than significant local issues.</p>
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	<p><i>The discharge of the <b>Miscellaneous functions – Part 1 – relating to Public Rights of Way, within the District Council’s responsibility as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.</b></i></p> <p><i>The discharge of the following <b>Miscellaneous functions – Part II – relating to hedgerows, trees and hedges as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.</b></i></p>	<p>All public rights of way matters delegated to the Corporate Director} (Operations and Delivery)</p> <p>All hedgerows, trees and hedges matters delegated to the Assistant Director (Planning)</p>
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Human Resources and Council Tax Committee</b>	<p><u>Human Resources</u></p> <p><i>The discharge of the following <b>Part II – miscellaneous functions as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended), and as detailed in Appendix 1 to Part 3 of the Constitution</b></i></p> <p><b>Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).</b></p> <p><b>Additional roles and functions of the Committee are as set out below:</b></p>	<p><b>Chief Executive:</b></p> <p>Regrading posts, restructuring and determining staffing levels (except where Section 4 of the Local Government and Housing Act 1989 applies and it is appropriate for the full Council to consider any specific proposals of the Head of Paid Service in this regard).</p>
	<ol style="list-style-type: none"> <li>1. Decision-making on key Human Resource and Personnel issues not reserved by the Council or delegated to officers.</li> <li>2. Strategic Overview and Monitoring of General Staffing Profile and Data through assessment and consideration of periodical statistical reports.</li> <li>3. Agreement of key personnel policies, including but not exclusively: <ul style="list-style-type: none"> <li>• Recruitment and Selection</li> <li>• Pay and Reward</li> </ul> </li> </ol>	<p>Chief Executive in consultation with the Assistant Director (Partnerships):</p> <p>The approval of a redundancy or mutually agreed Settlement Agreement for dismissal of staff up to and including Management Team level.</p> <p>Any Corporate Director in consultation with the Assistant Director (Partnerships):</p> <ol style="list-style-type: none"> <li>1. The exercise and performance of the Council’s functions,</li> </ol>

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	<ul style="list-style-type: none"> <li>• Performance Management</li> <li>• Flexible Working and Work Life Balance</li> <li>• Equality and Diversity</li> <li>• Discipline and Grievance</li> <li>• Managing Change</li> <li>• Human Resources and Organisation Development Strategy</li> </ul> <p>4. The recommendation to Council of the terms and conditions of service, dismissal including redundancy, voluntary redundancy and voluntary early retirement of the Chief Executive.</p> <p>5. The recommendation to Council of the retirement on the grounds of ill health of the Chief Executive on the recommendation of the Council's Medical Advisor.</p>	<p>powers and duties in relation to applications for extensions of sick pay entitlement.</p> <p>2. The recruitment and appointment of permanent staff up to, but not including the Corporate Directors above, in consultation with the Workforce Panel and in accordance with the Council's agreed procedures.</p> <p>Assistant Director (Partnerships) in consultation with the Corporate Director (Operations and Delivery)</p>
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	<p>6. The appointment and dismissal of and, disciplinary action against the Corporate Directors, Assistant Directors and Heads of Service.</p> <p>7. Undertake the function of an advisory Independent Panel in accordance with the statutory provisions for the Chief Executive, Chief Financial Officer and Monitoring Officer (together with the Independent Persons).</p> <p><u>Council Tax</u></p> <p>To exercise the Council's functions relating to the formal acceptance of Council Tax precepts from the major precepting authorities.</p> <p>The exercise of the Council's functions, powers and duties in relation to the Terms of Reference.</p>	<p>1. Minor amendments to Human Resources Policies and Procedures necessary as a result of legislation, national guidance or best practice.</p> <p>2. Approval of Pension Scheme related matters.</p> <p>The Chief Executive and Corporate Directors shall have authority to act in relation to all matters within their areas of responsibility in connection with management of staff including terms and conditions of employment and dismissal in accordance with the Council's Human Resources Policies and Staff Handbook as maintained on the Council's Intranet.</p>
<p><b>Human Resources Sub-Committee</b></p>	<p>1. Forms part of the recruitment, dismissal and disciplinary process for the appointment of Senior Officers (as defined in Paragraph 3 of Part 11 of Schedule 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended), which includes the following posts:</p>	

	<ul style="list-style-type: none"> <li>• Chief Executive;</li> <li>• Section 151 Officer;</li> <li>• Monitoring Officer;</li> <li>• Chief Officers (Corporate Directors, Directors and Assistant Director (Partnerships)); and</li> <li>• All Deputy Chief Officers (Assistant Directors and other such Senior Officers as defined within the Regulations)</li> </ul> <p>2. Form a panel to undertake interview of applicants for Senior Officer posts who have successfully been shortlisted and undertaken necessary technical interviews and assessments.</p> <p>3. The Panel will be comprised of 3 members normally consisting of:</p> <ul style="list-style-type: none"> <li>• a Portfolio Holder, as determined by the Leader of the Council. The Leader will have the right to appoint a substitute for the Portfolio Holder if they will be unable to attend or if otherwise necessary;</li> <li>• the Chairman or Vice-Chairman of the Human Resources &amp; Council Tax Committee; and</li> <li>• a named committee member from a political group that is not represented on the Cabinet.</li> </ul> <p>4. The Panel must take into account the views and professional advice given by the relevant officers before an offer of appointment can be made.</p> <p>5. The Panel will notify the Assistant Director (Partnerships) of the name of the person to whom the post is to be offered and any other matter relevant to the appointment.</p> <p>6. The Panel will determine whether any objection received from Cabinet through the Leader is valid and the offer of appointment should be made.</p> <p>7. In the case of the Chief Executive and Monitoring Officer, the Panel will recommend to Council to approve the appointment before an offer is made.</p>	<p>Assistant Director (Partnerships)</p> <ul style="list-style-type: none"> <li>• Notify all members of Cabinet of the name of the person to whom the post is to be offered and any other matter relevant to the appointment.</li> <li>• Receive any objection from Cabinet through the Leader to the appointment within the 3 day period for objections.</li> </ul>
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Committee	Functions and Terms of Reference	Delegated Functions
<b>Licensing and Registration Committee</b>	<p><b><i>Functions relating to licensing, registration (B), Health and Safety at Work (C) and Smoke-free premises (FA) as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution.</i></b></p> <p><b>Additional roles and functions of the Committee are as set out below:</b></p> <ul style="list-style-type: none"> <li>• Deciding whether to make a change to the Hackney Carriage Fare Scale operative within the Tending District having considered the representations received in response to the Public Notice duly given pursuant to Section 65 of Part II of the Local Government (Miscellaneous Provisions) Act 1976;</li> <li>• Recommending the Licensing Policy Statement to full Council and the Gambling Statement of Licensing Policy to Cabinet;</li> <li>• Power to consider, consult and consider representations in respect of an Early Morning Restriction Order (EMRO) under Sections 172A to 172E of the Licensing Act 2003 and to recommend implementation or rejection of application for EMRO to Full Council; and</li> <li>• Power to consult and consider representations in respect of Late Night Levy (LNL) Provisions under Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 and to recommend implementation or rejection of an application to introduce LNL to Full Council.</li> </ul> <p><b><i>The discharge of the following Part II – Miscellaneous Functions as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) and as detailed in Appendix 1 to Part 3 of the Constitution:</i></b></p> <ul style="list-style-type: none"> <li>• Power to make closing order with respect to take away food shops; and</li> <li>• Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol</li> </ul>	<ol style="list-style-type: none"> <li>1. All licensing and registration functions are delegated to the Miscellaneous Licensing Sub-Committee or the Premises/Personal Licences Sub-Committee as detailed below and otherwise the Assistant Director (Governance) except determining standard licensing conditions and determining or recommending proposed policies, which remain with the Committee.</li> <li>2. All functions relating to Health and Safety at Work and Smoke Free Premises are delegated to the Corporate Director (Operations and Delivery).</li> <li>3. The initial, in principle, consideration of a proposal received for a change to the Hackney Carriage Fare Scale operative within the District and decision to give public notice (pursuant to Section 65 of Part II of the Local Government (Miscellaneous Provisions) Act 1976) of the Council's intention to amend the Fare Scale is delegated to the Assistant Director (Governance) in consultation with the Chairman of the</li> </ol>

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	<p>consumption.</p> <p>In addition the following powers and duties:</p> <ul style="list-style-type: none"> <li>The setting of any fees and/or charges payable to the Council for the issue of any licences where the Council has discretion over such fees and/or charges) or otherwise in relation to any of the functions falling within the remit of the Licensing and Registration Committee and its Sub-Committees.</li> </ul>	Committee.
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Miscellaneous Licensing Sub-Committee</b>	<p>To consider and determine matters relating to all licences, consents, registrations and certificates that fall within the terms of reference of the Licensing and Registration Committee, except where:</p> <ol style="list-style-type: none"> <li>The function relates to the Licensing Act 2003 and/ or the Gambling Act 2005; or</li> <li>The function has been delegated to Officers of the Council.</li> </ol> <p>In addition the Sub-Committee will exercise the following powers and duties:</p> <ol style="list-style-type: none"> <li>Consideration for recommendations to local Highway Panel and Cabinet on: <ul style="list-style-type: none"> <li>installation of new taxi ranks and amendments/removals to existing taxi ranks.</li> </ul> </li> <li>Consider appeals or objections received against the Council's Street Trading Policy or refusal of consent by Officers.</li> <li>Consider appeals or objections received against Officers' refusal of Street or House Collection applications.</li> </ol>	<p>All matters are delegated to the Assistant Director (Governance) except in circumstances where the matter:</p> <ol style="list-style-type: none"> <li>remains with the Committee or Sub-Committee or</li> <li>officers are recommending approval contrary to a relevant adopted licensing policy.</li> </ol>



Committee	Functions and Terms of Reference	Delegated Functions
<b>Premises/ Personal Licences Sub- Committee</b>	<p>1. To consider applications for licences where representations have been received and not withdrawn, and applications for the review of licences, covered by the Licensing Act 2003 as follows:</p> <ul style="list-style-type: none"> <li>(i) Application for Premises Licence</li> <li>(ii) Application for Provisional Statement</li> <li>(iii) Application for Variation of Premises Licence</li> <li>(iv) Application to vary Designated Premises Supervisor following police objection</li> <li>(v) Application for transfer of Premises Licence following police objection</li> <li>(vi) Consideration of police objections made to interim Authority Notice</li> <li>(vii) Determination of application for Club Premises Certificate</li> <li>(viii) Determination of application to vary Club Premises Certificate</li> <li>(ix) Decision to give counter notice following police objection or environmental health authority objection to temporary event notice</li> <li>(x) Application for grant of personal licence following police objection</li> <li>(xi) Revocation of Licence where convictions came to light after grant etc.</li> <li>(xii) Application for review of Premises Licence</li> <li>(xiii) Application for review of Club Premises Certificate</li> <li>(xiv) Review following Closure Order</li> </ul>	<p><b>To the Assistant Director (Governance):</b></p> <p>1. All Council functions, powers and duties in relation to the Licensing Act 2003 and the Gambling Act 2005 which do not remain the specific function of the Committee or Sub-Committee.</p>
	<p>2. To consider applications for licences, where representations have been received and not withdrawn, and applications for the review of licences, covered by the Gambling Act 2005, as follows:</p> <ul style="list-style-type: none"> <li>(i) Application for Premises Licence</li> <li>(ii) Application for variation of Licence</li> <li>(iii) Application for transfer of a Licence</li> <li>(iv) Application for a Provisional Statement</li> <li>(v) Review of a Premises Licence</li> <li>(vi) Application for Club Gaming/Club Machine Permit</li> <li>(vii) Cancellation of a Club Gaming/Club Machine Permit</li> <li>(viii) Decision to give a Counter Notice to a Temporary Use Notice (Section 224)</li> <li>(ix) Matters referred to the Sub-Committee by Officers, notwithstanding the delegations set out opposite.</li> <li>(x) Application for Prize Gaming Permit</li> <li>(xi) Application for Family Centre Gaming Machine Permit</li> </ul>	

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Committee	Functions and Terms of Reference	Delegated Functions
<b>Standards Committee</b>	<ol style="list-style-type: none"> <li>1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;</li> <li>2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels of the Council;</li> <li>3. To advise the Council on the adoption or revision of the Members' Code of Conduct;</li> <li>4. To advise, train or arrange training on matters relating to and assisting Members, Co-opted Members and Town and Parish Councillors on observing the Members' Code of Conduct;</li> <li>5. To approve procedures for the conduct of hearings into complaints against Members;</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure.</li> </ol>
	<ol style="list-style-type: none"> <li>6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;</li> <li>7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework;</li> <li>8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;</li> <li>9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and</li> <li>10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.</li> </ol>	<ol style="list-style-type: none"> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> </li> <li>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</li> </ol>

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	<p><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> </ol>	<ol style="list-style-type: none"> <li>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct.</li> <li>5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011.</li> </ol>
	<ol style="list-style-type: none"> <li>3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and</li> <li>4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.</li> </ol>	<ol style="list-style-type: none"> <li>6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</li> </ol>
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Town and Parish Councils' Standards Sub-Committee</b>	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> <li>3. To hear and determine complaints about Town and Parish Council Members and Co-opted</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure.</li> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed</li> </ol>

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	<p>Members referred to it by the Monitoring Officer ; and;</p> <p>4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.</p>	<p>Independent Person and determine whether the complaint:</p> <ul style="list-style-type: none"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> </ul>
		<ul style="list-style-type: none"> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p> <p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>

# Schedule 3

## Responsibility for Executive Functions

**EXECUTIVE FUNCTIONS ARE THE RESPONSIBILITY OF THE CABINET.**

### **1. ROLE AND RESPONSIBILITIES**

1. The general roles and responsibilities of the Cabinet are as follows:-

- (i) To make recommendations to the District Council with regard to the formulation of its policy framework, including the setting of the budget and council tax levels.
- (ii) To advise the District Council on all matters requiring a decision outside of the Council's agreed budget and policy framework.
- (iii) To discharge in accordance with the District Council's policy framework all functions of the Council, except those functions which cannot, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and other legislation, be the responsibility of the Cabinet. Such functions are the responsibility of the Council and its various Committees as set out in Schedule 2 to Part 3 of the Constitution.
- (iv) To deal with those "local choice functions" which have been delegated to the Cabinet by the Council as detailed in Schedule 1 of Part 3 of the Constitution.

### **2. RESPONSIBILITIES OF THE LEADER OF THE COUNCIL**

1. The Leader of the Council is responsible for the overall operation of the Council's portfolios through effective management of their Cabinet.
2. To ensure effective communication of Cabinet business including appropriate liaison with Overview and Scrutiny.
3. To be the leading voice of the Council on all executive functions and for overall policy.
4. To be the member representative for executive functions of the Council working with the Council's partners and stakeholders, on statutory bodies, the voluntary sector, the business community and other national and local organisations.
5. Ensure that their actions are taken in accordance with Section 3 below when making formal decisions.

### **3. GENERAL PRINCIPLES REGARDING DECISION MAKING BY THE CABINET**

1. The Leader of the Council is responsible for approving the delegation of executive functions to either:
  - (i) The Cabinet collectively (see 4.1 below);
  - (ii) An individual Member of the Cabinet (Portfolio Holder) (see 4.2 below);

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(April 2015) Part 3.27

- (iii) A Working Party of the Cabinet (known as a Portfolio Holder Working Party);
- (iv) An Officer, in consultation with the relevant Portfolio Holder(s); or
- (v) An Officer.

Executive functions can also be delegated to, and discharged by an area committee or another local authority or jointly with one or more local authorities.

No Member or Committee of the Cabinet to whom the Leader of the Council has delegated a function may delegate on to another Member or Committee.

2. Powers and duties of the Cabinet and Portfolio Holders under their delegated authorisation must be:-

- (i) performed on behalf of and in the name of the Council;
- (ii) subject to the directions of the Council and of the Cabinet as appropriate;
- (iii) subject to powers and duties reserved for confirmation by the Council as set out in Article 4 of the Constitution;
- (iv) within the limits of the Council's approved policy framework and budget;
- (v) statutory provisions and restrictions;
- (vi) taking into account Officer's advice; and
- (vii) in accordance with the Council's approved Policies, Procedures, Protocols and Codes of Conduct.

3. Absence of the Leader of the Council:

The Portfolio Holder designated by the Leader as their Deputy may exercise the functions of the Leader of the Council in the absence of the Leader.

4. The Leader of the Council may exercise any of the powers delegated to the Cabinet:

- a. Following a resolution of the Cabinet (subject to the Constitution), or
- b. In cases of urgency, in consultation with the Monitoring Officer and/or Section 151 Officer.

In cases of urgency the decision of the Leader of the Council will be recorded and published in accordance with the Constitution. The Leader of the Council will also be required to make a public statement at the next formal meeting of the Cabinet which will explain why they had taken the decision as a matter of urgency.

5. The Leader of the Council may exercise any of the powers delegated to a Portfolio Holder:

- a. In their absence
- b. At their request
- c. In cases of urgency, in consultation with the Monitoring Officer and/or Section 151 Officer, or
- d. As the Leader so determines.

6. Where decisions are taken by individual Portfolio Holders under delegated powers the following principles and decisions shall apply:

- (a) All delegations to Portfolio Holders will be exercised after consultation and written advice from all relevant Officers.

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(November 2018) Part 3.28

- (b) In cases where there is a significant difference of opinion between Portfolio Holders, the issue will be referred to the Leader of the Council in consultation with the Chief Executive and if necessary to the Cabinet for decision.
  - (c) The exercise of delegations by Portfolio Holders shall be within the Scheme of Delegated Powers of the Portfolio Holders.
  - (d) A Portfolio Holder shall not delegate any powers to an Officer unless such delegation is approved by the Leader of the Council.
  - (e) A Portfolio Holder may, if they consider it appropriate, elect to refer up to the Cabinet, the exercise of any power delegated to them.
7. In cases where there is an overlap in responsibilities between Portfolio Holders, the Leader of the Council shall determine which Portfolio Holder(s) should make the decision.
  8. The Monitoring Officer shall in any case of uncertainty and after having considered relevant legislation, determine whether any matter falls within the remit of the Council, the Cabinet, a Committee or an Officer of the Council.
  9. A record of Portfolio Holder decisions shall be maintained and published, as set out in Article 7 of the Constitution.
  10. In the event of a change to the delegations of Executive Functions by the Leader or to the corporate structure of the Council by the Chief Executive, the changes will take immediate effect. The relevant amendments to this scheme of delegation should be made in the Constitution as soon as practicable.

#### **4.1 THE CABINET COLLECTIVELY**

The following details the broad principles of issues that are the responsibility of the Cabinet and which shall be considered by the Cabinet collectively at public meetings:

##### **TERMS OF REFERENCE**

To be responsible for Community Leadership for the District of Tendring. To lead the preparation of the District Council's policies and budget. To take decisions on resources and priorities together with other stakeholders and community partners as appropriate, and to deliver and implement the budget and policies decided by full Council. To be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

1. Developing and making recommendations to the Council in respect of the plans and strategies that form the Council's policy framework.
2. Formulations of budgets and other statutory financial requirements for submission to Council.
3. Monitoring the Council's budgetary and overall financial position.
4. Decisions as required by the Council's Financial and Procurement Procedure Rules including transactions in respect of the Final Accounts.

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(July 2020) Part 3.29

5. Decisions outside of the Budget or Policy Framework in accordance with the Procedure Rules.
6. The approval of strategies, policies, plans and guidance which are the responsibility of Cabinet and are not delegated elsewhere within the Constitution.
7. Consideration and approval of the acquisition and disposal of property in accordance with the Property Dealing Procedure, legislation and specific consents.
8. Consideration, approval and determination of objections, under Section 123 of the Local Government Act 1972, received in respect of proposed disposals of land used as public open space. All such consideration and determination to be at a public meeting of the Cabinet.
9. Power to consider objections received and then determine proposed Traffic Regulation Orders under the Road Traffic Regulations Act 1984 (as amended). All such objections to be determined at a public meeting of the Cabinet.
10. The approval of planning policy matters that are the responsibility of the Executive such as Local Development Orders and Neighbourhood Plans (including statutory public consultations thereon).
11. Issues delegated to individual Portfolio Holders that in their opinion a collective decision by the Cabinet is required.
12. Issued delegated to an Officer that in the opinion of the Management Team a collective decision by the Cabinet is required.
13. Reviewing from time to time the Council's Constitution.

## 4.2 INDIVIDUAL MEMBERS OF THE CABINET (PORTFOLIO HOLDERS)

### 4.2.1 Responsibilities

The Leader of the Council has delegated overall strategic responsibilities for service areas to members of the Cabinet, known as Portfolio Holders, which are set out in the table below:

Portfolio Holder	Overall strategic responsibilities
Leader	<ul style="list-style-type: none"> <li>• Corporate Vision</li> <li>• Community Leadership</li> <li>• Countywide Leadership role</li> <li>• Tending for Growth</li> <li>• Representative role at County, Regional and National Level</li> <li>• Corporate Priorities and Corporate Planning</li> <li>• Performance Management</li> <li>• Freeports and Freeport Essex</li> </ul>



Corporate Finance and Governance	Overall strategic responsibility for	
	Finance	<ul style="list-style-type: none"> <li>• Financial Strategy</li> <li>• General Fund and Housing Revenue Account Annual Budget</li> <li>• Budget Management</li> <li>• Accountancy</li> <li>• Exchequer</li> <li>• Insurance</li> <li>• Treasury management and banking</li> <li>• Procurement strategy and central purchasing</li> <li>• Internal Audit</li> <li>• Corporate Health and Safety</li> </ul>
	Tendring/Colchester Borders Garden Community	<ul style="list-style-type: none"> <li>• Representative on Tendring/Colchester Borders Garden Community Joint Committee</li> </ul>
	Corporate Enforcement	<ul style="list-style-type: none"> <li>• Corporate Enforcement Strategy and framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>
	Legal and Governance	<ul style="list-style-type: none"> <li>• Legal advice and support to Council (re: executive and non-executive functions)</li> <li>• Legal services to departments</li> <li>• Regulation of Investigatory Powers Act 2000 – policy (compliance and co-ordination)</li> </ul>
	Democratic Services	<ul style="list-style-type: none"> <li>• Council, Cabinet and Committee Services</li> <li>• Corporate Administration including programming meetings</li> <li>• Member support</li> <li>• Corporate complaints</li> <li>• Ombudsman issues</li> <li>• Outside bodies appointments and support</li> </ul>
	Corporate Asset Management	<ul style="list-style-type: none"> <li>• Overview of the Property Programme</li> <li>• Overview and formulation of Assets Management Plan, Property Strategy and Property Office Procedures</li> <li>• Property Service providing property advice and support to service areas</li> <li>• Initiation and authorisation of property transactions in accordance with the Property Dealing Procedure</li> </ul>
		<ul style="list-style-type: none"> <li>• ICT Strategy</li> <li>• ICT contracts</li> </ul>

	ICT	<ul style="list-style-type: none"> <li>• Networks and system support</li> <li>• Data Protection</li> <li>• Information Management</li> <li>• Cyber Security</li> <li>• FOI/EIR requests for information</li> <li>• Internet</li> <li>• Intranet</li> <li>• Telephony</li> <li>• Digital Infrastructure Champion</li> </ul>
	Human Resources	<ul style="list-style-type: none"> <li>• Career Track</li> </ul> <p>(NB other Human Resources functions are non-executive and are delegated to the Human Resources and Council Tax Committee)</p>
<b>Environment</b>	Environment	<ul style="list-style-type: none"> <li>• Pest Control</li> <li>• Food, safety and hygiene</li> <li>• Water safety/quality</li> <li>• Pollution</li> <li>• Animal welfare</li> <li>• Public protection</li> <li>• Environmental health</li> <li>• Port health</li> <li>• Unlawful Car Sales</li> <li>• Climate Change Champion &amp; Green Issues</li> </ul>
	Refuse Collection and Cleansing	<ul style="list-style-type: none"> <li>• Household waste minimisation and collection</li> <li>• Recycling maximisation and collection</li> <li>• Street cleansing</li> <li>• Dog Warden Service</li> <li>• Abandoned Vehicles</li> <li>• Unlawful car sales</li> </ul>
	Open Spaces and Bereavement	<ul style="list-style-type: none"> <li>• Crematorium and cemeteries</li> <li>• Horticultural services</li> <li>• Open spaces</li> <li>• Recreation grounds</li> <li>• Children's play areas</li> <li>• Public halls</li> <li>• Sports clubs</li> <li>• Fleet management and vehicle workshops</li> <li>• Public Conveniences</li> <li>• Street Furniture</li> </ul>

	Corporate Enforcement	<ul style="list-style-type: none"> <li>Corporate Enforcement Strategy and Framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>
<b>Housing</b>	Strategic Housing (Private Sector Housing)	<ul style="list-style-type: none"> <li>Financial assistance for private sector housing</li> <li>Houses in Multiple Occupation</li> <li>Private Sector Housing – regulation and improvement</li> <li>Tenants Redress Scheme</li> <li>Private Sector Housing conditions enforcement and advice</li> <li>Gypsy/Traveller liaison and representative on Essex Countywide Traveller Joint Committee</li> <li>Home energy efficiency and fuel poverty</li> <li>Jaywick Sands Team</li> </ul>
	Strategic Housing (Housing Options and Allocations)	<ul style="list-style-type: none"> <li>Housing strategy and development</li> <li>Homelessness policy and advice and assistance to homeless persons and in housing need</li> <li>Housing allocation scheme</li> </ul>
	Building Services and Facilities Management	<ul style="list-style-type: none"> <li>Maintenance of housing assets including sheltered schemes</li> <li>Housing investment programme</li> <li>Dangerous structures</li> <li>Buildings advisory service</li> <li>Council office and buildings policy including facilities management and maintenance</li> <li>Depots</li> <li>Office cleaning</li> </ul>
	Housing Management	<ul style="list-style-type: none"> <li>Sheltered housing</li> <li>Tenancy management</li> <li>Housing Revenue Account business plan</li> <li>Supporting people contract with Essex County Council</li> <li>Local supporting people</li> <li>Partnership with registered providers</li> <li>Enable new opportunities to address housing need through partnership working</li> <li>Tenant Relations</li> </ul>
		<ul style="list-style-type: none"> <li>Administration of council tax and</li> </ul>

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	Revenue and Benefits	<ul style="list-style-type: none"> <li>housing benefit</li> <li>• Business rates (NNDR) and reliefs</li> <li>• Local Council Tax Support Scheme</li> <li>• Cash Collection/Paypoint</li> <li>• Rent collection</li> <li>• Right to Buy and other disposals</li> </ul>
	Commercial	<ul style="list-style-type: none"> <li>• Customer services</li> <li>• Careline service</li> <li>• Provision, maintenance and development of CCTV systems</li> <li>• Out of hours service</li> <li>• Tenant relations</li> <li>• Contact centre</li> </ul>
	Corporate Enforcement	<ul style="list-style-type: none"> <li>• Corporate Enforcement Strategy and framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>
<b>Partnerships</b>	Health and Well-being	<ul style="list-style-type: none"> <li>• Health Service Liaison</li> <li>• Health and Well-being</li> <li>• Community Health</li> <li>• Health inequalities</li> <li>• Equality and Diversity</li> </ul>
	Partnerships	<ul style="list-style-type: none"> <li>• Education</li> <li>• Community engagement, development and empowerment (including consultations, advice and support)</li> <li>• Stakeholder relationships with public and third party organisations</li> <li>• Neighbourhood activities</li> </ul>
	Community Safety	<ul style="list-style-type: none"> <li>• Community Safety Partnership</li> <li>• Representative on the Essex Police, Fire and Crime Panel</li> <li>• Crime and Disorder Strategy</li> </ul>
	Civil Contingencies	<ul style="list-style-type: none"> <li>• Provision of Emergency Planning</li> <li>• Business continuity</li> </ul>
	Corporate Enforcement	<ul style="list-style-type: none"> <li>• Corporate Enforcement Strategy and framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>
<b>Business and Economic Growth</b>	Economic Growth	<ul style="list-style-type: none"> <li>• Economic Growth Strategy and representative on the North Essex Economic Board</li> <li>• Economic Partnerships</li> <li>• Business Engagement</li> <li>• Inward Investment</li> <li>• Business Support (employment and development)</li> </ul>

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		<ul style="list-style-type: none"> <li>• Strategic Regeneration Programmes</li> <li>• Employability, Skills and apprenticeships including Job Centre Plus Partnerships</li> <li>• Broadband</li> </ul>
	Superfast Essex	Representative on Superfast Essex Steering Board
	Corporate Enforcement	<ul style="list-style-type: none"> <li>• Corporate Enforcement Strategy and framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>
<b>Leisure and Tourism</b>	Leisure Services	<ul style="list-style-type: none"> <li>• Sports centres and facilities (representative on Joint Consultative Committees and partnerships with schools)</li> <li>• Sports initiatives and sports development</li> <li>• Communities of interest (Children and Young People for sport and leisure)</li> </ul>
	Tourism and Events	<ul style="list-style-type: none"> <li>• Tourism Strategy</li> <li>• Tourism Events</li> <li>• Tourism information and promotion</li> <li>• Princes Theatre management</li> <li>• Arts, entertainment, culture and heritage initiatives and events</li> <li>• Street Trading and Markets</li> </ul>
	Seafronts	<ul style="list-style-type: none"> <li>• Seafront Management</li> <li>• Beach Huts and beach cleaning</li> <li>• Kiosks</li> </ul>
	Coast Protection and Engineering	<ul style="list-style-type: none"> <li>• Coast Protection and flood defence – planning and major schemes</li> <li>• Coast Protection Maintenance</li> <li>• Minor Engineering works</li> <li>• Sewerage and land drainage</li> <li>• Local highways and lighting functions e.g. road closures, street naming, numbering and name plates and highways rangers</li> </ul>
	Car Parking	<ul style="list-style-type: none"> <li>• Off street car parking service</li> <li>• Traffic Regulation Orders</li> <li>• Strategic parking advice and on street functions as delegated by the Highway Authority</li> <li>• Council's representative on North Essex Parking Partnership (NEPP)</li> <li>• Electric Vehicle Charging</li> </ul>

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	Corporate Enforcement	<ul style="list-style-type: none"> <li>Corporate Enforcement Strategy and framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>
<b>Planning</b>	Strategic Planning	<ul style="list-style-type: none"> <li>Corporate Oversight of the various planning functions (especially enforcement)</li> <li>Constructive liaison with the Chairman of the Planning Committee and the Chairman of the Planning Policy and Local Plan Committee</li> <li>Substitute Member on the Tendring Colchester Borders Garden Community Joint Committee</li> </ul>
	Corporate Enforcement	<ul style="list-style-type: none"> <li>Corporate Enforcement Strategy and framework oversight (excludes regulatory functions that are the responsibility of Planning and Licensing Committees)</li> </ul>

#### 4.2.2 Role of Leader and Individual Portfolio Holders

In addition to the general principles set out in Section 3 above, the role of individual Portfolio Holders with areas of responsibility is as follows:-

1. To have overall responsibility for the development, implementation and review of Strategies and District Council Policy in relation to their portfolios and to be the main Council spokesperson thereon.
2. To monitor service performance regarding progress towards achieving strategies and objectives and delivery of service performance targets within approved budgets.
3. To satisfy themselves as the integrity of financial information and the adequacy of financial controls and risk management arrangements.
4. To represent and speak on behalf of the Cabinet at the Overview and Scrutiny and Audit Committees when they are dealing with issues in their portfolio.
5. To be a member of the Cabinet and exercise collective responsibility in decision making and in making recommendations to the Council.
6. To consult with the Committees, other Members, partners and stakeholders including the public as appropriate in the formulation and development of Council policy within their portfolio.
7. To inform and consult relevant ward Members when making formal decisions.
8. To make decisions in accordance with the Council's Strategies, Policies, Procedures, Protocols and Codes of Conduct or as otherwise required by the Constitution.

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### **4.3 ADDITIONAL SPECIFIC DELEGATIONS TO INDIVIDUAL PORTFOLIO HOLDERS**

#### **Corporate Finance and Governance**

1. Overseeing implementation of the Property Strategy, Property Programme and Property Office Procedures in accordance with the Property Dealing Procedure.
2. The exercise of functions delegated to the Portfolio Holder by the Property Dealing Procedure.
3. The monitoring and review of the operation of the Council's Constitution and recommending amendments to the Constitution to the Cabinet/Council.
4. To oversee the preparation and recommendation of financial forecasts and annual detailed budget, including Housing Revenue Account.
5. In consultation with the Chief Financial Officer, to agree the outturn position/report each year to provide the necessary flexibility to comply with the new statutory timetable for publishing the Council's Statement of Accounts.
6. Overview and presentation of financial monitoring reports to Cabinet.
7. The exercise of functions delegated to the Portfolio Holder by the Financial and Procurement Procedure Rules.
8. The approval of the Council's Council Tax Base and the Government's Annual NNDR Forecast Return.
9. Implementation and Monitoring of the Council's Treasury Management Policy Statement and Treasury Management Practices.
10. The approval of the draft Annual Capital and Treasury Strategy, in advance of it being formally considered by Cabinet, for consultation purposes with the Resources and Services Overview & Scrutiny Committee. In due course, the Cabinet will then recommend the final version of the Strategy to Full Council for formal adoption.

#### **Leisure and Tourism**

1. To approve the making of car parking regulation orders when requested by Essex County Council.
2. Proposals for and approve the making of traffic regulation orders where no objections are received.
3. The determination of Hackney Carriage stands under Section 63 of Part 2 of the Local Government (Miscellaneous Provisions) Act 1976.

#### **Housing**

1. The authorisation of delegated budgets to formally constituted stakeholder groups subject to adequate provision having been made in the revenue estimates approved by Cabinet.

2. Oversee the preparation of the Housing Revenue Account Business Plan, Housing General Fund, Housing Benefits and the Housing Investment Programme, including rent setting and review, within policy guidelines as determined by the Cabinet.
3. The development, implementation and amendment, as required, of the Housing Investment Programme in accordance with the annual budget set by Cabinet.
4. The development and review of the Council's Local Council Tax Support Scheme for presentation to Cabinet for recommendation to Council for approval.

### **Planning**

1. Ensuring that there is effective two-way communication between the Executive and the Local Plan and Planning Committees. In particular in relation to the implementation of current Development Plan policies and to drafts of any review of the Development Plan
2. Approval, where permitted, of Master Plans, Conservation Area Management Plans and Development and Design Briefs prepared to support any Development Plan Documents.
3. To consider and agree responses to consultation exercises on national, regional and sub-regional planning policy issues and on other authorities' planning documents.

### **Business and Economic Growth**

1. To act as lead portfolio holder in respect of all Transport cross-cutting issues.
2. Engagement with regional and sub-regional partnerships, planning and funding frameworks – including the Haven Gateway Partnership – to promote the interests of the Tendring District and the communities within it.
3. The approval of grants to organisations (including enhanced rate relief and other discretionary benefits).

### **Partnerships**

1. To act as lead portfolio holder in respect of the Council's Statement of Licensing Policy (Gambling Act 2005).

## **4.4 DELEGATION OF EXECUTIVE FUNCTIONS TO OFFICERS**

1. With the exception of the matters which the Leader of the Council has determined are to be discharged by the Cabinet or individual Portfolio Holders, as detailed in the Cabinet Scheme of Delegation, the Corporate Directors and, where appropriate, the Assistant Directors have delegated authority to discharge all executive functions within their respective service areas as set out in Article 12, having authority to act on all such matters. The Chief Executive shall determine from time to time what the service responsibilities of Corporate Director and each Assistant Director shall be.
2. The delegation of powers to officers is underpinned by the principle and culture of consultation and liaison with Members, as appropriate and the ability for officers to refer matters to the relevant decision maker i.e. individual Portfolio Holder or a meeting of the full Cabinet, where it is felt that this is appropriate due to the nature of an issue.



3. In all cases of delegations to officers where consultation with the relevant Portfolio Holder is necessary, and in cases where the relevant Portfolio Holder is not available, the Leader of the Council is to be consulted.

In instances, where there is disagreement between the officer and the relevant Portfolio Holder the matter should be referred to Cabinet for consideration and determination.

4. The discharge of all such functions by Officers shall be subject to:-
  - (i) actions being taken in accordance with the Council's Budget and Policy Framework and other Council Policies, Procedures, Protocols and Codes of Conduct;
  - (ii) consultation, as appropriate with relevant Portfolio Holder;
  - (iii) the referral of any required decision or action which is controversial in nature to the appropriate Member decision making individual or body; and
  - (iv) recording the decision in the required format.
5. The Leader of the Council has delegated authority for executive functions to Chief Executive and the Corporate Directors, however any authority granted to the Chief Executive, a Corporate Director or an Assistant Director, unless otherwise indicated, may be exercised by an Officer authorised by the Corporate Director or Assistant Director in writing for that purpose. The Monitoring Officer will maintain a record of such authorisations which shall be available for inspection.
6. The Corporate Directors and, where appropriate, the Assistant Directors are Designated Officers for the purposes of legislation within their respective service areas as set out in Article 12 of the Constitution and have the power to designate Officers of the authority as an authorised person for purposes relating to legislation falling within their areas of responsibility as set out in Article 12.
7. Any authority which can statutorily only be discharged by Officers with a specific level of qualification must only be conferred to and discharged by such Officers. Furthermore, where the matter relates to a statutory power or duty conferred or imposed directly on an Officer of the Council, only that Officer may discharge the function.
8. The Chief Executive has authority to exercise any executive function delegated to Officers, except where an Officer with appropriate qualifications must only discharge such a delegation or where the matter relates to a statutory power or duty conferred or imposed directly on an Officer of the Council as referred to in paragraph 6.
9. The delegations to Officers include the normally accepted powers and duties of Officers to deal with matters of routine occurrence falling within the scope of their departmental and service responsibilities. This includes all present and future legislation relating to the functions of the service and nothing in this schedule shall derogate from any statutory power or duties conferred or imposed directly on an Officer of the Council.
10. In accordance with the legislative requirements, any Officer making a decision in connection with the discharge of an executive function under their delegated powers shall be responsible for maintaining a record of such decisions and arranging for this to be published on the Council's website.
11. Where functions, which are the responsibility of the Cabinet, are delegated to Officers, the Cabinet remain accountable to the Council, through overview and scrutiny committees for the

discharge of those functions. That is to say, the Cabinet will be held to account for both its decision to delegate a function and the way that the function is being carried out. Officers may be requested to attend an Overview and Scrutiny Committee, if an Officer's decision is called in.

12. The Monitoring Officer shall determine in any case of uncertainty whether any matter falls within the remit of the Council, the Cabinet, a Committee or an Officer of the Council. Such a determination will be having taken account of relevant legislation.

#### **4.4.1 General Responsibilities delegated to Officers:**

1. All Corporate Directors have the authority to incur expenditure (with the exception of external legal resources) in accordance with the Budget and Policy Framework, Financial Procedure Rules and Procurement Procedure Rules. Instructing external legal resources remains the responsibility of the Assistant Director (Governance).
2. All Corporate Directors are authorised to apply for planning permission in respect of land and/or buildings owned by or within the control of the Council and held in respect of the functions of a Portfolio Holder. In such instances, consultation with the relevant Portfolio Holder is mandatory.
3. In consultation with the Assistant Director (Governance), all Corporate Directors are authorised to deal with the assignment of leases and granting, variation and renewal of licences up to a maximum duration of 12 months including annual rights of way within their respective service areas of responsibility.
4. The management and maintenance of all the land holdings occupied or within the control of the service area remit, including health and safety inspections.
5. All Corporate Directors are authorised to issue and serve notices under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 in respect of functions under the control of a Portfolio Holder.
6. All Corporate Directors are authorised in consultation with the Assistant Director (Governance), to take all steps in connection with any legal proceedings, in respect of any function under the jurisdiction of a Portfolio Holder including the commencement or defence of, withdrawal, settlement or compromise of any such proceedings.
7. All Corporate Directors are authorised in consultation with the Assistant Director (Governance), to appear on the Council's behalf in any legal proceedings, under the jurisdiction of a Portfolio Holder, before all courts, tribunals and inquiries.
8. All Assistant Directors, in consultation with the relevant Portfolio Holder, Management Team Member and the Assistant Director (Finance & IT), are authorised to decide the level of the annual discretionary fees and charges for their service (including any in-year changes that may be required) for inclusion within the Council's corporate schedule of fees and charges.
9. The Chief Executive is delegated the power to authorise compensation payments up to a maximum of £5,000 as a result of Local Government & Social Care Ombudsman or Housing Ombudsman recommendations or by virtue of the Corporate Complaints Procedure.

# Schedule 4

## Schedule of Proper Officers And Related Provisions

**The Officers appointed to the statutory positions of Head of Paid Service, Section 151 Officer and Monitoring Officer are set out in Article 12 of the Council's Constitution.**

Proper Officer and Statutory Officer appointments must be distinguished from powers "delegated" to Officers.

1. Delegated powers –
  - (1) are confirmed at the Council's discretion
  - (2) may be withdrawn or amended; and
  - (3) may be subject to the observance of conditions and/or compliance with Council policy.
2. Under certain statutes and guidance, the Council is required to appoint a Proper Officer or Statutory Officers to undertake a specific function. In such cases, the effect of the statutory provision is as follows:-
  - (i) the function can only be dealt with through that Officer;
  - (ii) the function can only be discharged by that Officer in the way prescribed by the statutory provision concerned;
  - (iii) the Council cannot direct the way in which the function is discharged.
3. In the absence of the Proper Officers their powers are exercisable by their Deputy or Deputies in absence or by such Officer(s) as the Proper Officer in writing shall appoint

## SCHEDULE 4 – PROPER OFFICERS

**The Council has appointed the following Proper Officers**

STATUTORY REFERENCE	FUNCTION	PROPER OFFICER	Officer to act in event of Proper Officer being unable to
<b>Local Government Act 1972</b>			
Section 41	Returning Officer at Local Elections	Chief Executive	Head of Democratic Services & Elections
Section 83	Witness and receipt of Declarations of Acceptance of Office	Chief Executive	Monitoring Officer
Section 84	Receipt of Notice of Resignation	Chief Executive	Monitoring Officer
Section 88	Convening of Meeting of Council to fill casual vacancy in office of Council Chairman	Chief Executive	Monitoring Officer
Section 89	Receipt of Notice of casual vacancy in the case of Councillors	Chief Executive	Monitoring Officer
Section 100B(2)	Exclusion of Reports from inspection by public	Monitoring Officer	Deputy Monitoring Officer
Section 100B(7)	Provision of copies of documents other than Agenda and Minutes to the Press	Monitoring Officer	Deputy Monitoring Officer
Section 100C(2)	Provision of summary of proceedings of a closed meeting	Monitoring Officer	Deputy Monitoring Officer
Section 100D(5)	Provision of background papers	Head of Democratic Services & Elections	Committee Services Manager
Section 100F(2)	Disclosure of documents to Members	Monitoring Officer	Deputy Monitoring Officer
Section 115	Receipt of true account and monies due from Officers	Section 151 Officer	Deputy Section 151 Officer
Section 146	Statutory Declarations and Certificates with regard to securities	Section 151 Officer	Deputy Section 151 Officer
Section 151	Responsibility for provision of adequate and effective Internal Audit function	Section 151 Officer	Deputy Section 151 Officer
Section 191	Functions with respect to Ordnance Survey Act 1841	Director for Planning	Assistant Director (Planning)
Section 210	Powers in respect to local charity	Section 151 Officer	Deputy Section 151 Officer

(Green)

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<b>STATUTORY REFERENCE</b>	<b>FUNCTION</b>	<b>PROPER OFFICER</b>	<b>Officer to act in event of Proper Officer being unable to</b>
<b>Local Government Act 1972 cont.</b>			
Section 212	Local Land Charges Register	Assistant Director (Planning)	Support & Development Manager
Section 225(1)	Deposit of Documents	Monitoring Officer	Committee Services Manager
Section 229(5)	Certification of copies of documents intended to be used in legal proceedings	Monitoring Officer	Deputy Monitoring Officer
Section 234(1)	Authentication of Documents	Monitoring Officer	Deputy Monitoring Officer
Sections 236 & 238	Certification of Byelaws	Assistant Director (Governance)	An in-house Solicitor
Schedule 12 – Para 4 (a)	Signature of Council Summons	Chief Executive	Monitoring Officer
(b)	Receipt of Notice of address for Council Summons	Head of Democratic Services & Elections	Committee Services Manager
Schedule 14 – Para 25	Certification of Resolutions	Monitoring Officer	Deputy Monitoring Officer
Schedule 16 – Para 28	Receipt of deposit of Lists of protected buildings	Director for Planning	Assistant Director (Planning)
Schedule 22 – Para 17	Authentication of Notices etc. under the Housing Acts	Corporate Director (Operations and Delivery)	Assistant Director (Housing & Environment)
<b>Local Government (Miscellaneous Provisions) Act 1976</b>			
Section 41	Evidence of Resolutions and Minutes of proceedings	Monitoring Officer	Deputy Monitoring Officer
<b>Representation of the People Regulations 1986</b>			
Regulation 96	Retention of documents relating to Postal voting	Chief Executive	Head of Democratic Services & Elections
<b>Representation of the People Act 1983</b>			
Section 8(2)	Appointment of Electoral Registration Officer (automatically acting Returning Officer in Parliamentary elections)	Chief Executive	Head of Democratic Services & Elections

(Green)

<b>STATUTORY REFERENCE</b>	<b>FUNCTION</b>	<b>PROPER OFFICER</b>	<b>Officer to act in event of Proper Officer being unable to</b>
<b>Representation of the People Act 1983 cont</b>			
Sections 18B and 31	Designation of Polling Districts and Places (Parliamentary and Local Government Elections)	Chief Executive	Head of Democratic Services & Elections
Section 52(3)	Deputising for Registration Officer	Deputy Chief Executive	Head of Democratic Services & Elections
Sections 67 to 70	Appointment etc. of Election Agent	Returning Officer	Returning Officer to appoint Deputies at each election (as required)
Sections 75, 81, 82 & 89	Return of election expenses	Chief Executive	Head of Democratic Services & Elections
Section 128	Publication of election Petition	Chief Executive	Head of Democratic Services & Elections
Section 131	Provision of accommodation for election court	Chief Executive	Head of Democratic Services & Elections
<b>Local Elections (Principal Areas) Rules 1986</b>			
Rule 44	Receive notice of Declaration of Result	Chief Executive	Head of Democratic Services & Elections
Rules 46 to 48	Retention of election documents	Chief Executive	Head of Democratic Services & Elections
<b>Police and Crime Commissioner Elections Order 2012</b>			
Article 10	Designation of Polling Districts & Places	Chief Executive	Head of Democratic Services & Elections
<b>Local Government Finance Act 1988</b>			
Section 114	Report to Full Council in respect of unlawful expenditure or an unbalanced budget	Section 151 Officer	Deputy Section 151 Officer
Section 116	To inform the Authority's external auditor of the date, time, place and outcome of meetings held under Section 115 of the Act	Section 151 Officer	Deputy Section 151 Officer
<b>Local Government (Committees and Political Groups) Regulations 1990</b>			
Regulations 8-10, 13, 14 & 17	Political balance and appointments to committees	Chief Executive	Monitoring Officer
<b>Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000</b>			
Regulations 5-8	Functions relating to petitions and referenda for elected mayor	Chief Executive	Monitoring Officer

(Green)

(May 2022) Part 3.44

<b>STATUTORY REFERENCE</b>	<b>FUNCTION</b>	<b>PROPER OFFICER</b>	<b>Officer to act in event of Proper Officer being unable to</b>
<b>Local Authorities (Standing Orders) (England) Regulations 2001</b>			
Schedule 1 Part II	Administration relating to the appointment and dismissal of a member of staff	Assistant Director (Partnerships)	Human Resources & Business Manager
<b>Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and final determination of 'Need to Know'</b>			
Regulations 2, 7, 10, 12, 13, 14, 15, 16 & 20 and Common Law position	Access to Information Procedure and Recording of Decisions	Monitoring Officer	Deputy Monitoring Officer

# Schedule 5

## Joint Arrangements

### NORTH ESSEX PARKING PARTNERSHIP

Tendring Council is a member of the North Essex Parking Partnership, which includes the Boroughs and Districts of **Braintree, Colchester, Epping Forest, Harlow, Tendring** and **Uttlesford**.

The Partnership adopted responsibility for the ongoing maintenance and enforcement of on-street parking restrictions throughout the north of Essex.

The Partnership's responsibilities will include the implementation of new parking restrictions and schemes, including ensuring that all existing signs and street lining relating to on-street parking restrictions is in place and is up to standard.



# Appendix 1 to Part 3 of the Constitution

2000 No. 2853

## LOCAL GOVERNMENT, ENGLAND

### The Local Authorities (Functions and Responsibilities) (England) Regulations 2000

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<i>Made</i>	<i>19th October 2000</i>
<i>Laid before Parliament</i>	<i>26th October 2000</i>
<i>Coming into force</i>	<i>16th November 2000</i>

The Secretary of State for the Environment, Transport and the Regions, in exercise of the powers conferred on him by sections 13 and 105 of the Local Government Act 2000 hereby makes the following Regulations:

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#### Extent

Preamble: England

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#### 1. Citation, commencement, application and interpretation

- (1) These Regulations may be cited as the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and shall come into force on 16<sup>th</sup> November 2000.
- (2) These Regulations apply in relation to local authorities in England.
- (3) In these Regulations:

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“the 1972 Act” means the Local Government Act 1972;  
“the 1998 Act” means the School Standards and Framework Act 1998 [;...]²<sup>1</sup>  
[“the 2000 Act” means the Local Government Act 2000;]³  
[“the 2004 Act” means the Planning and Compulsory Purchase Act 2004 [;]⁴<sup>1</sup>  
[“the 2005 Act” means the Gambling Act 2005 (c.19) [;...]⁶]⁵<sup>4</sup>  
[“the Gambling Act Order” means the Gambling Act 2005 (Commencement No.6 and Transitional Provisions) Order 2006 (S.I. 2006/3272)⁷; [...]⁸]⁶  
[“the 2006 Act” means the Health Act 2006 [;and]⁹]⁵  
[“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007.]⁹

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## Notes

- 1 Definition inserted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(2) (April 22, 2005)
- 2 Word revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment) (No.2) Regulations 2007/1557 reg.2(2)(a) (July 1, 2007)
- 3 Definition inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.3(1)(a) (March 31, 2008)
- 4 Definition added by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 reg.2(2) (April 21, 2006)
- 5 Definition inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) (No.2) Regulations 2007/1557 reg.2(2)(b) (July 1, 2007)
- 6 Definition inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(2) (September 1, 2007)
- 7 S.I. 2006/3272, to which there are amendments not relevant to these Regulations.
- 8 Word revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.3(1)(b) (March 31, 2008)
- 9 Definition inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.3(1)(c) (March 31, 2008)

## Commencement

reg. 1(1)-(3) definition of "the 1998 Act": November 16, 2000

## Extent

reg. 1(1)-(3) definition of "the 2007 Act": England

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## 2. Functions not to be the responsibility of an authority's executive

- (1) The functions of a local authority specified in column (1) of Schedule 1 to these Regulations by reference to the enactments, directions and circulars specified in relation to those functions in column (2) are not to be the responsibility of an executive of the authority.
- (2) The functions of:
  - (a) imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted

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- (i) in the exercise of a function specified in column (1) of Schedule 1; or
- (ii) otherwise than by an executive of the authority, in the exercise of any function under a local Act; and

(b) determining any other terms to which any such approval, consent, licence, permission or registration is subject,

are not to be the responsibility of an executive of the authority.

(3) The function of determining whether, and in what manner, to enforce:

(a) any failure to comply with an approval, consent, licence, permission or registration granted as mentioned in paragraph (2)(a);

(b) any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject; or

(c) any other contravention in relation to a matter with regard to which the function of determining an application for approval, consent, licence, permission or registration would not be the responsibility of an executive of the authority,

is not to be the responsibility of an executive of the authority.

(4) The function of:

(a) amending, modifying or varying any such approval, consent, licence, permission or registration as is mentioned in paragraph (2), or any condition, limitation or term to which it is subject; or

(b) revoking any such approval, consent, licence, permission or registration,

is not to be the responsibility of an executive of the authority.

(5) The function of making any scheme authorised or required by regulations under section 18 (schemes for basic, attendance and special responsibility allowances for local authority members) of the Local Government and Housing Act 1989<sup>1</sup>, or of amending, revoking or replacing any such scheme, is not to be the responsibility of an executive of an authority.

(6) The function of determining:

(a) the amount of any allowance payable under

(i) subsection (5) of section 3 (chairman's expenses) of [ , or paragraph 2(4) (chairman and mayor) of Schedule 2 to, ]<sup>2</sup> the 1972 Act;

(ii) subsection (4) of section 5 (vice-chairman's expenses) of [ , or paragraph 5(4) (power of mayor of London borough to appoint deputy) of Schedule 2 to,]<sup>3</sup> that Act;

(iii) subsection (4) of section 173 (financial loss allowance) of that Act<sup>4</sup>;

(iv) section 175 (allowances for attending conferences and meetings) of that Act;

(b) the rates at which payments are to be made under section 174 (travelling and subsistence allowances) of that Act;

(c) the amount of any allowance payable pursuant to a scheme under section 18 of the Local Government and Housing Act 1989, or the rate at which payments by way of any such allowance are to be made;

(d) whether a charge should be made for any approval, consent, licence, permit or registration the issue of which is not the responsibility of an executive of the authority; and

(e) where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge,

Is not to be the responsibility of an executive of the authority.

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[ (6A) The function of making a request under section 14A(1) (requests for single-member electoral areas) of the Local Government Act 1992<sup>6</sup> for single-member electoral areas is not to be the responsibility of an executive of the authority.

(6B) The function of passing a resolution to change a scheme for elections under section 32(1), 37(1) or 39(1) (resolutions for schemes for elections) of the 2007 Act is not to be the responsibility of an executive of the authority.

(6C)-(6D) [...]<sup>7</sup>

(6E) The function of making an order giving effect to recommendations made in a community governance review under section 86 (reorganisation of community governance) of the 2007 Act is not to be the responsibility of an authority's executive.

(6F) The duty to make a change in governance arrangements under paragraph 3 or 8 of Schedule 4 to the 2007 Act is not to be the responsibility of an authority's executive.<sup>5</sup>

[ (7) Section 101 (arrangements for discharge of functions by local authorities) of the 1972 Act shall not apply with respect to the discharge of any function mentioned in paragraph (5), (6)(a) to (c) or (6A), (6B), (6E) or (6F).]<sup>8</sup>

(8) Subject to any provision of regulations under section 20 (joint exercise of functions) of the Local Government Act 2000, the function of:

(a) making arrangements for the discharge of functions by a committee or officer under section 101(5) of the 1972 Act; and

(b) making appointments under section 102 (appointment of committees) of the 1972 Act,

is not to be the responsibility of an executive of the authority.

(9) The functions of York City Council in relation to the management of the Yorkshire Museum and Gardens pursuant to an agreement dated 30<sup>th</sup> December 1960 between that Council and the Yorkshire Philosophical Society<sup>9</sup> are not to be the responsibility of an executive of that Council.

(10) The functions of South Lakeland District Council in relation to the management of land at Lake Windermere pursuant to an agreement dated 1<sup>st</sup> April 1975 between that Council, Windermere Parish Council and Lakes Parish Council<sup>10</sup> are not to be the responsibility of an executive of the District Council.

(11) Unless otherwise provided by any other provision of these Regulations, a function of a local authority which, by virtue of any enactment passed or made before the making of these Regulations, may be discharged only by an authority, is not to be the responsibility of an executive of the authority.

(12) In paragraphs (1) and (11), "enactment" includes an enactment contained in a local Act or comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).

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## Notes

- 1 Section 18 is amended by section 99(3) to (9) of the Local Government Act 2000.
- 2 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.4(a)(i) (March 31, 2008)
- 3 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.4(a)(ii) (March 31, 2008)
- 4 Section 173(4) was amended by the Local Government and Housing Act 1989 (c.42), Schedule 11, paragraph 26. A relevant saving was made by article 3(2) of the Local Government and Housing Act 1989 (Commencement No. 11 and Savings) Order 1991 (S.I. 1991/344).
- 5 Added by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.4(b) (March 31, 2008)
- 6 1992 c.19. Section 14A of the Local Government Act 1992 was inserted by section 55 of the Local Government and Public Involvement in Health Act 2007.
- 7 Revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.3(a) (November 28, 2008)
- 8 Substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.3(b) (November 28, 2008)
- 9 The agreement is referred to in regulation 5(2)(e)(ii) of the Local Government (Committees and Political Groups) Regulations 1990 (S.I. 1990/1553).
- 10 The agreement is referred to in regulation 5(2)(e)(iii) of the Local Government (Committees and Political Groups) Regulations 1990.

## Commencement

reg. 2(1)-(12): November 16, 2000

## Extent

reg. 2(1)-(12): England

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### 3. Functions which may be the responsibility of an authority's executive

(1) The functions specified in Schedule 2 to these Regulations may be (but need not be) the responsibility of an executive of the authority.

(2) The functions of Hastings Borough Council in relation to the management of the Hastings and Saint Leonards Museum<sup>1</sup> may be (but need not be) the responsibility of an executive of the Council.

(3) Where the functions mentioned in paragraph (2) are the responsibility of the Council's executive, the Hastings and Saint Leonards Museum Association may appoint persons who are for the time being members of the Association to attend any meeting of an overview and scrutiny committee of that Council, or of a sub-committee or any such committee ("the relevant committee or sub-committee") at which the management of the Museum is the subject of consideration; and the persons so appointed shall, subject to paragraph (4), be entitled to speak and vote at the meeting on

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any question relating to the management of the Museum which falls to be decided at that meeting.

(4) The number of persons appointed as mentioned in paragraph (3) shall as nearly as may be, bear to the number for the time being of members of the relevant committee or sub-committee, the same proportion as 2 bears to 5, but the number of persons representing the Association at any such meeting as is referred to in that paragraph as are entitled to vote shall not exceed the number of members of the relevant committee or sub-committee present at that meeting.

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#### Notes

<sup>1</sup> See also regulation 5(2)(e)(i) of the Local Government (Committees and Political Groups) Regulation 1990 (S.I. 1990/1553).

#### Commencement

reg. 3(1)-(4): November 16, 2000

#### Extent

reg. 3(1)-(4): England

### 4. Functions not to be the sole responsibility of an authority's executive

(1) In connection with the discharge of the function:

(a) of formulating or preparing a plan or strategy of a description specified in column (1) of Schedule 3 to these Regulations;

[ (b) of formulating a plan or strategy for the control of the authority's borrowing, investments or capital expenditure or for determining the authority's minimum revenue provision; or]<sup>1</sup>

(c) of formulating or preparing any other plan or strategy whose adoption or approval is, by virtue of regulation 5(1), a matter for determination by the authority,

the actions designated by paragraph (3) ("the paragraph (3) actions") shall not be the responsibility of an executive of the authority.

(2) Except to the extent of the paragraph (3) actions, any such function as is mentioned in paragraph (1) shall be the responsibility of such an executive.

(3) The actions designated by this paragraph are:

(a) the giving of instructions requiring the executive to reconsider any draft plan or strategy submitted by the executive for the authority's consideration;

(b) the amendment of any draft plan or strategy submitted by the executive for the authority's consideration;

[ (bb) the approval, for the purposes of public consultation in accordance with regulation 10 or 22 of the Town and Country Planning (Development Plans) (England) Regulations 1999, of draft proposals associated with the preparation of alterations to, or the replacement of, a development plan,<sup>3</sup><sup>2</sup>

(c) the approval, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, of any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted;[...]<sup>4</sup>

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[(ca) the approval, for the purpose of its submission to the Secretary of State for independent examination under section 20 (independent examination) of the 2004 Act, of a development plan document; and ]<sup>4</sup>

(d) the adoption (with or without modification) of the plan or strategy.

(4) The function of amending, modifying [ , revising ]<sup>5</sup> , [ varying, withdrawing or revoking ]<sup>6</sup> any plan or strategy of a description referred to in paragraph (1), (whether approved or adopted before or after coming into force of these Regulations)

(a) shall be the responsibility of an executive of the authority to the extent that the making of the amendment, modification [ , revision ]<sup>7</sup>, [ variation, withdrawal or revocation ]<sup>8</sup>

(i) is required for giving effect to requirements of the Secretary of State or a Minister of the Crown in relation to a plan or strategy submitted for his approval, or to any part so submitted; [...]<sup>9</sup>

[ (ia) is recommended by the person carrying out, under section 20 of the 2004 Act, an independent examination of a development plan document; or ]<sup>9</sup>

(ii) is authorised by a determination made by the authority when approving or adopting the plan or strategy, as the case may be; and

(b) shall not be the responsibility of such an executive to any other extent.

[(4A) In connection with the discharge of functions under any of sections 28 to 31 (joint local development documents and joint committees) of the 2004 Act, the actions designated by paragraph 4(C) (“the paragraph (4C) actions”) shall not be the responsibility of an executive of the authority.

(4B) Except to the extent of the paragraph (4C) actions, any such function as is mentioned in paragraph (4A) shall be the responsibility of such an executive.

(4C) The actions designated by this paragraph are:

(a) the making of an agreement to prepare one or more joint development plan documents;

(b) the making of an agreement to establish a joint committee to be, for the purposes of Part 2 (local development) of the 2004 Act, the local planning authority;

(c) where the authority is a constituent authority to a joint committee, the making of an agreement that the joint committee is to be, for the purposes of Part 2 of the 2004 Act, the local planning authority for any area or matter which is not the subject of an order under section 29 of the 2004 Act or an earlier agreement under section 30 of the 2004 Act; and

(d) the making of a request to the Secretary of State for the revocation of an order constituting a joint committee as the local planning authority for any area or in respect of any matter.

] <sup>10</sup>

(5) Except to the extent mentioned in paragraph (6), the function of making an application:

(a) under subsection (5) of section 135 (programme for disposals) of the Leasehold Reform, Housing and Urban Development Act 1993<sup>11</sup> . [ for the inclusion of a disposal in a disposals programme ]<sup>12</sup> or

(b) [ for consent to that disposal ]<sup>13</sup> under section 32 (power to dispose of land held for the purposes of Part II) or section 43 (consent required for certain disposals not within section 32)

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of the Housing Act 1985<sup>14</sup>,  
shall be the responsibility of an executive of the authority.

- (6) The extent mentioned in this paragraph is the authorisation of the making of the application.
- (7) The function of making such an application is referred to in paragraph (5), to the extent mentioned in paragraph (6), shall not be the responsibility of an executive of the authority.
- (8) Section 101 of the 1972 Act shall not apply with respect to the discharge:
- (a) of a function specified in paragraph (1) to the extent that, by virtue of that paragraph, it is not the responsibility of an executive of the authority;
  - [ (b) of the functions specified in paragraphs (4), (4A) and (5) to the extent that they are not the responsibility of an executive of the authority. ]<sup>15</sup>

- (9) In connection with the discharge of a function of:
- (a) making a calculation in accordance with any of sections 32 to 37, 43 to 49, 52I, 52J, 52T and 52U of the Local Government Finance Act 1992<sup>16</sup>, whether originally or by way of substitute; or
  - (b) issuing a precept under Chapter IV of Part I of that Act,
- the actions designated by paragraph (11) (“the paragraph (11) actions”) shall be the responsibility of an executive of the authority.

(10) Except to the extent of the paragraph 11 actions, any such function as is mentioned in paragraph (9) shall not be the responsibility of such an executive.

- (11) The actions designated by this paragraph are:
- (a) the preparation, for submission to the authority for their consideration of:
    - (i) estimates of the amounts to be aggregated in making the calculation or of other amounts to be used for the purposes of the calculation and estimates of the calculation; or
    - (ii) the amounts required to be stated in the precept;
  - (b) the reconsideration of those estimates and amounts in accordance with the authority’s requirements;
  - (c) the submission for the authority’s consideration of revised estimates and amounts.

[ (12) The function, pursuant to an order under section 70 (functions of local authorities) of the Deregulation and Contracting Out Act 1994, of authorising a person to exercise a function to which that section applies (“section 70 function”):

- (a) shall be the responsibility of an executive of the authority to the extent that the section 70 function is the responsibility of that executive; and
- (b) shall not be the responsibility of such an executive to any other extent.

(13) The function of revoking such an authorisation as is referred to in paragraph (12):



- (a) shall be the responsibility of an executive of the authority to the extent that the section 70 function is the responsibility of the executive; and
- (b) shall not be the responsibility of such an executive to any other extent<sup>18</sup>;

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## Notes

- 1 Substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.6(1) (March 31, 2008)
- 2 Inserted subject to the operation of arrangements specified in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 reg.2(a)(i) (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)
- 3 S.I. 1999/3280.
- 4 Added by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(a) (April 22, 2005)
- 5 Word inserted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(b)(i) (April 22, 2005)
- 6 Words substituted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(b)(ii) (April 22, 2005)
- 7 Word inserted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(b)(iii)(aa) (April 22, 2005)
- 8 Words substituted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(b)(iii)(bb) (April 22, 2005)
- 9 Added by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(b)(iii)(cc) (April 22, 2005)
- 10 Added by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(c) (April 22, 2005)
- 11 To which there are amendments not relevant to these Regulations.
- 12 Words inserted subject to the operation of arrangements as specified in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 reg.2(a)(ii) (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)
- 13 Words inserted subject to the operation of arrangements as specified in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 reg.2(a)(iii) (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)
- 14 Relevant amendments, in subsection (3) of section 32 and subsection (1)(a) of section 43, were made by paragraph 3(a), (d) and (e) of the Schedule to S.I. 1997/74.
- 15 Substituted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(3)(d) (April 22, 2005)
- 16 Sections 52I, 52J, 52T and 52U were inserted by the Local Government Act 1999 (c. 27) Schedule 1, paragraph 1.
- 17 Inserted subject to the operation of arrangements as specific in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 reg.2(a)(iv) (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)

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**18** 1994 c. 40. See also article 21 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 (S.I. 2001/2211).

### **Commencement**

reg. 4(1)-(11)(c): November 16, 2000

### **Extent**

reg. 4(1)-(13)(b): England

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## **5. Discharge of executive functions by authorities**

(1) Subject to paragraph (2), a function of any of the descriptions specified in column (1) of Schedule 4 to these Regulations (which, but for this paragraph, might be the responsibility of an executive of the authority), shall not be the responsibility of such an executive in the circumstances specified in column (2) in relation to that function.

(2) Paragraph (1) shall not apply in relation to the discharge of a function of the description specified in paragraph 3 of column (1) of Schedule 4 where—

(a) the circumstances which render necessary the making of the determination may reasonably be regarded as urgent; and

(b) the individual or body by whom the determination is to be made has obtained from the chairman of a relevant overview and scrutiny committee or, if there is no such person, or if the chairman of every relevant overview and scrutiny committee is unable to act, from the chairman of the authority or, in his absence, from the vice-chairman, a statement in writing that the determination needs to be made as a matter of urgency.

(3) In paragraph (2) “relevant overview and scrutiny committee” means an overview and scrutiny committee of the authority concerned whose terms of reference include the power to review or scrutinise decisions or other actions taken in the discharge of the function to which the determination relates.

(4) The individual or body by whom a determination is made pursuant to paragraph (2) shall, as soon as reasonably practicable after the making of the determination, submit to the authority a report which shall include particulars of—

(a) the determination;

(b) the emergency or other circumstances in which it was made; and

(c) the reasons for the determination.

(5) Section 101 of the 1972 Act shall not apply with respect to the discharge of a function referred to in paragraph (1) which, by virtue of that paragraph, is not the responsibility of an executive of the authority.

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**Commencement**

reg. 5(1)-(5): November 16, 2000

**Extent**

reg. 5(1)-(5): England

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*Signed by authority of the Secretary of State for the Environment, Transport and the Regions*

*Hilary Armstrong*

Minister of State,

Department of the Environment, Transport and the Regions

19th October 2000

## SCHEDULE 1

### FUNCTIONS NOT TO BE THE RESPONSIBILITY OF AN AUTHORITY'S EXECUTIVE

#### Regulation 2(1)

(1) Function	(2) Provision of Act or Statutory Instrument
<b>A. Functions relating to town and country planning and development control</b>	
[[... ... ... ...]	... ... ... ...] <sup>2</sup>
5. Power to determine application for planning permission [ or permission in principle] <sup>3</sup> .	[ Sections 59A(1)(b), 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990 (c.8)] <sup>4</sup> .
6. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990.
7. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990.
8. Power to decline to determine application for planning permission [ or permission in principle] <sup>5</sup> .	Section 70A of the Town and Country Planning Act 1990.
9. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning Act (General Development Procedure) Order 1995 (S.I. 1995/419) and directions made thereunder.
10. Power to determine application for planning permission [or permission in principle] <sup>5</sup> made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (S.I. 1992/1492).
11. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).
12. Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.
13. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990.

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<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
14. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.
15. Power to grant consent for the display of advertisements.	Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I. 1992/666).
16. Power to authorise entry onto land	Section 196A of the Town and Country Planning Act 1990.
17. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.
18. Power to serve a planning contravention notice, breach of condition notice or stop notice.	Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990.
[18A. Power to issue a temporary stop notice.	[Section 171E of the Town and Country Planning Act 1990 <sup>8</sup> .] <sup>7</sup> ] <sup>6</sup>
19. Power to issue an enforcement notice.	Section 172 of the Town and Country Planning Act 1990.
20. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990.
21. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990.
22. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991 (c.34), paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c.25) and paragraph 6(5) of Schedule 14 to that Act.
23. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.
24. Power to determine applications for listed building consent, and related powers.	[Sections 16(1) and (2), 17 and 33(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) ] <sup>9</sup> .
[...]	...] <sup>10</sup>

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
26. Duties relating to applications for listed building consent [...] <sup>11</sup>	[Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)] <sup>9</sup> and [regulations 3 to 6 and 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (S.I. 1990/1519)] <sup>12</sup> and [paragraphs 8, 15 and 26 of Development of the Environment, Transport and the Regions Circular 01/01] <sup>13</sup>
27. Power to serve a building preservation notice, and related powers.	[Sections 3(1) and 4(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)] <sup>9</sup> .
28. Power to issue enforcement notice in relation to demolition of [listed] <sup>14</sup> building in conservation area.	[Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)] <sup>9</sup> .
29. Powers to acquire a listed building in need of repair and to serve a repairs notice.	[Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)] <sup>9</sup> .
30. Power to apply for an injunction in relation to a listed building.	[Section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)] <sup>9</sup> .
[30A. Power to authorise stopping up or diversion of highway.	[Section 247 of the Town and Country Planning Act 1990 (c.8).] <sup>16</sup> <sup>15</sup>
31. Power to execute urgent works.	[Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)] <sup>9</sup> .] <sup>1</sup>
[32. Duty to enter land in Part 2 of the brownfield land register.	Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations 2017.] <sup>17</sup>
<b>B. Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)</b>	
1. Power to issue licences authorising the use of land as a caravan site ("site licences").	Section 3(3) of the Caravan Sites and Control of Development Act 1960 (c.62).
2. Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936 (c.49)
3. Power to license hackney carriages and private hire vehicles.	(a) as to hackney carriages, the Town Police Clauses Act 1847 (10 & 11 Vict. C.89), as extended by section 171 of the Public Health Act 1875 (38 & 39 Vic. C.55), and section 15 of the Transport Act 1985 (c.67); and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (c.57);  (b) as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
4. Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
5. Power to license operators of hackney carriages and private hire vehicles.	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
6. Power to register pools promoters.	Schedule 2 to the Betting, Gaming and Lotteries Act 1963 (c.2) <sup>18</sup> [as saved for certain purposes by article 3(3)(c) of the Gambling Act Order ] <sup>19</sup> .
7. Power to grant track betting licences.	Schedule 3 to the Betting, Gaming and Lotteries Act 1963 <sup>18</sup> [as saved for certain purposes by article 3(3)(d) and (4) of the Gambling Act Order] <sup>20</sup> .
8. Power to license inter-track betting schemes.	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963 <sup>21</sup> [as saved for certain purposes by article 3(3)(e) of the Gambling Act Order.] <sup>22</sup>
9. Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968 (c.65) <sup>18</sup> [as saved for certain purposes by article 4(2)(l) and (m) of the Gambling Act Order] <sup>23</sup> .
10. Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976 (c. 32) <sup>18</sup> [as saved for certain purposes by article 5(2)(a) and (3) of the Gambling Act Order] <sup>24</sup>
11. Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976 <sup>18</sup> [as saved for certain purposes by article 5(2)(d) and (5) of the Gambling Act Order] <sup>25</sup> .
12. Power to issue cinema and cinema club licences.	Section 1 of the Cinema Act 1985 (c.13).
13. Power to issue theatre licences.	Section 12 to 14 of the Theatres Act 1968 (c.54) <sup>26</sup> .
14. Power to issue entertainment licences.	Section 12 of the Children and Young Persons Act 1933 (c.12), section 52 of, and Schedule 12 to, the London Government Act 1963 (c.33), section 79 of the Licensing Act 1964 (c.26), sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 (c.19) and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions Act 1982 (c.30).
[[14A Any function of a licensing authority] <sup>28</sup>	[[ Licensing Act 2003 (c.17) and any regulations or orders made under that Act ] <sup>30</sup> . ] <sup>29</sup> ] <sup>27</sup>
[14AZA Powers and functions relating to late night levy requirements.	Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (c.13) and any regulations made under that Chapter.] <sup>31</sup>

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
[14AA Duty to comply with requirement to provide information to Gambling Commission.	[Section 29 of the [2005 Act] <sup>34</sup> . ] <sup>33</sup> <sup>32</sup>
[14AB Functions relating to the exchange of information.	[ Section 30 of the 2005 Act.] <sup>36</sup> <sup>35</sup>
[14AC Functions relating to occasional use notices.	[Section 39 of the 2005 Act.] <sup>38</sup> <sup>37</sup>
[14B Power to resolve not to issue a casino premises licence	Section 166 of the 2005 Act.] <sup>39</sup>
[14C. Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises.	[Section 304 of the 2005 Act.] <sup>41</sup> <sup>40</sup>
[14CA Power to make order disapplying section section 279 or 282(1) of the 2005 Act in relation to specified premises.	[Section 284 of the 2005 Act.] <sup>43</sup> <sup>42</sup>
[14D Power to institute criminal proceedings [...] <sup>45</sup>	[Section 346 of the 2005 Act.] <sup>46</sup> <sup>44</sup>
[14E Power to exchange information	[Section 350 of the 2005 Act.] <sup>48</sup> <sup>47</sup>
[14F Functions relating to the determination of fees for premises licences.	[The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (S.I. 2007/479). ] <sup>50</sup> <sup>49</sup>
[...]	...
...	...
...	...
...	...
...	...] <sup>51</sup>
[14G Functions relating to the registration and regulation of small society lotteries.	[Part 5 of Schedule 11 to the 2005 Act.] <sup>53</sup> <sup>52</sup>
15. Power to licence sex shops and sex cinemas.	The Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
16. Power to license performances of hypnotism.	The Hypnotism Act 1952 (c.46)



<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
17. Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982.
18. Power to license pleasure boats and pleasure vessels.	Section 94 of the Public Health Acts Amendment Act 1907 (c.53). <sup>54</sup> .
19. Power to register door staff.	Paragraphs 1(2) and 9 of Schedule 12 to the London Government Act 1963 (c.33) and Part V of the London Local Authorities Act 1995 (c.x).
20. Power to licence market and street trading.	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982, Part III of the London Local Authorities Act 1990 (c.vii) and section 6 of the London Local Authorities Act 1994 (c.xii).
21. Power to license night cafes and take-away food shops.	Section 2 of the Late Night Refreshment Houses Act 1969 (c.53) <sup>55</sup> , Part II of the London Local Authorities Act 1990 and section 5 of the London Local Authorities Act 1994.
[...]	...] <sup>56</sup>
23. Power to license dealers in game and the killing and selling of game.	Sections 5, 6, 17 and 18 and 21 to 23 of the Game Act 1831 (c.32); sections 2 to 16 of the Game Licensing Act 1860 (c.90), section 4 of the Customs and Inland Revenue Act 1883 (c.10), sections 12(3) and 27 of the Local Government Act 1874 (c.73), and section 213 of the Local Government Act 1972 (c.70).
24. Power of register and license premises for the preparation of food.	Section 19 of the Food Safety Act 1990 (c.16).
25. Power to license scrap yards.	Section 1 of the Scrap Metal Dealers Act 1964 (c.69).
26. Power to issue, amend or replace safety certificates (whether general or special) for sports grounds.	The Safety of Sports Grounds Act 1975 (c.52) <sup>57</sup> .
27. Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.	Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27).
28. Power to issue fire certificates.	Section 5 of the Fire Precautions Act 1971 (c.40).

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
29. Power to license premises for the breeding of dogs.	[Regulation 4 of those Regulations] <sup>58</sup> .
30. Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	
31. Power to register animal trainers and exhibitors.	
32. Power to license zoos.	Section 1 of the Zoo Licensing Act 1981 (c.37) <sup>60</sup>
33. Power to license dangerous wild animals.	Section 1 of the Dangerous Wild Animals Act 1976 (c.38).
34. Power to license knackers' yards.	Section 4 of the Slaughterhouses Act 1974. See also the Animal By-Products Order 1999 (S.I. 1999/646).
35. Power to license the employment of children.	Part II of the Children and Young Persons Act 1933 (c. 33), byelaws made under that Part, and Part II of the Children and Young Persons Act 1963 (c.37).
36. Power to approve premises for the solemnisation of marriages.	Section 46A of the Marriage Act 1949 (c.76) and the Marriages (Approved Premises) Regulations 1995 (S.I. 1995/510) <sup>61</sup>
37. Power to register common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to-	Regulation 6 of the Commons Registration (New Land) Regulations 1969 (S.I. 1969/1843).
(a) an exchange of lands effected by an order under section 19(3) of, or paragraph 6(4) of Schedule 3 to, the Acquisition of Land Act 1981 (c.67) or	
(b) an order under section 147 of the Inclosure Act 1845 (c.8 & 9 Vict. C. 118).	
38. Power to register variation of rights of common.	Regulation 29 of the Commons Registration (General) Regulations 1966 (S.I. 1966/1471) <sup>62</sup>
39. Power to license persons to collect for charitable and other causes.	Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 (c.31) and section 3 of the House to House Collections Act 1939 (c.44) <sup>63</sup>
40. Power to grant consent for the operation of a loudspeaker.	Schedule 2 to the Noise and Statutory Nuisance Act 1993 (c.40).

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
41. Power to grant a street works licence.	Section 50 of the New Roads and Street Works Act 1991 (c.22).
42. Power to license agencies for the supply of nurses.	Section 2 of the Nurses Agencies Act 1957 (c.16).
43. Power to issue licences for the movement of pigs.	Article 12 of the Pigs (Records, Identification and Movement) Order 1995 (S.I. 1995/11).
44. Power to license the sale of pigs.	Article 13 of the Pigs (Records, Identification and Movement) Order 1995.
45. Power to license collecting centres for the movement of pigs.	Article 14 of the Pigs (Records, Identification and Movement) Order 1995.
46. Power to issue a licence to move cattle from a market.	Article 5(2) of the Cattle Identification Regulations 1998 (S.I. 1998/871).
[46A Power to grant permission for provision , etc of services, amenities, recreation and refreshment facilities on highways, and related powers.	[Sections 115E, 115F and 115K of the Highways Act 1980.] <sup>65]</sup> <sup>64</sup>
47. Power to permit deposit of builder's skips on highway.	Section 139 of the Highways Act 1980 (c.66).
[47A Duty to publish notice in respect of proposal to grant permission under section 115E of the Highways Act 1980.	[Section 115G of the Highways Act 1980 <sup>67]</sup> <sup>66]</sup> <sup>64</sup>
48. Power to license planting, retention and maintenance of trees etc. in part of highways.	Section 142 of the Highways Act 1980.
49. Power to authorise erection of stiles etc. on footpaths or bridleways.	Section 147 of the Highways Act 1980.
50. Power to license works in relation to buildings etc. which obstruct the highway.	Section 169 of the Highways Act 1980.
51. Power to consent to temporary deposits or excavations in streets.	Section 171 of the Highways Act 1980.
52. Power to dispense with obligation to erect hoarding or fence.	Section 172 of the Highways Act 1980.
53. Power to restrict the placing of rails, beams etc. over highways.	Section 178 of the Highways Act 1980.
54. Power to consent to construction of cellars etc. under street.	Section 179 of the Highways Act 1980. <sup>68</sup>

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
55. Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators.	Section 180 of the Highways Act 1980.
56. Power to sanction use of parts of buildings for storage of celluloid.	Section 1 of the Celluloid and Cinematograph Film Act 1922 (c.35).
57. Power to approve meat product premises.	Regulations 4 and 5 of the Meat Products (Hygiene) Regulations 1994 (S.I. 1994/3082) <sup>69</sup>
58. Power to approve premises for the production of minced meat or meat preparations.	Regulation 4 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (S.I. 1995/3205).
59. Power to approve dairy establishments.	Regulations 6 and 7 of the Dairy Products (Hygiene) Regulations 1995 (S.I. 1995/1086) <sup>70</sup>
60. Power to approve egg product establishments.	Regulation 5 of the Egg Products Regulations 1993 (S.I. 1993/1520).
61. Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying or supplying both raw meat and ready-to-eat foods.	Schedule 1A to the Food Safety (General Food Hygiene) Regulations 1995 (S.I. 1995/1763) <sup>71</sup>
62. Power to approve fish products premises.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (S.I. 1998/994).
63. Power to approve dispatch or purification centres.	Regulation 11 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
64. Power to register fishing vessels on board which shrimps or molluscs are cooked.	Regulation 21 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
65. Power to approve factory vessels and fishery product establishments.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
66. Power to register auction and wholesale markets.	Regulation 26 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
67. Duty to keep register of food business premises.	Regulation 5 of the Food Premises (Registration) Regulations 1991 (S.I. 1991/2828).
68. Power to register food business premises.	Regulation 9 of the Food Premises (Registration) Regulations 1991.

(Green)

Part 3.66

(October 2018)

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
<p>[69. Power to issue near beer licence.</p> <p>70. Power to register premises or stalls for the sale of goods by way of competitive bidding.</p> <p>[71. Power to register motor salvage operators.</p> <p>[72. Functions relating to the registration of common land and town or village greens.</p>	<p>Sections 16 to 19 and 21 of the London Local Authorities Act 1995 (c.x.) and, to the extent that it does not have effect by virtue of regulation 2(3), section 25 of that Act.</p> <p>Section 28 of the Greater London Council (General Powers) Act 1984 (c.xxvii).<sup>[72]</sup></p> <p>Part I of the Vehicles (Crime) Act 2001 (c.3).<sup>[73]</sup></p> <p>Part 1 of the Commons Act 2006 (c.26) and the Commons Registration (England) Regulations 2008 (S.I. 2008/1961)<sup>[75]</sup>.<sup>[74]</sup></p>
<p><b>C. Functions relating to health and safety at work</b></p> <p>Functions under any of the “relevant statutory provisions” within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority’s capacity as an employer.</p>	<p>Part I of the Health and Safety at Work etc. act 1974 (c.37)<sup>[76]</sup></p>
<p><b>D. Functions relating to elections</b></p> <p>1. Duty to appoint an electoral registration officer.</p> <p>2. Power to assign officers in relation to requisitions of the registration officer.</p> <p>3. Functions in relation to parishes and parish councils.</p> <p>4. Power to dissolve small parish councils.</p> <p>5. Power to make orders for grouping parishes, dissolving groups and separating parishes from groups.</p> <p>6. Duty to appoint returning officer for local government elections.</p> <p>7. Duty to provide assistance at European Parliamentary elections.</p>	<p>Section 8(2) of the Representation of the People Act 1983 (c.2).<sup>[77]</sup></p> <p>Section 52(4) of the Representation of the People Act 1983.</p> <p>Part II of the Local Government and Rating Act 1997 (c.29) and subordinate legislation under that Part.</p> <p>Section 10 of the Local Government Act 1972.</p> <p>Section 11 of the Local Government Act 1972.</p> <p>Section 35 of the Representation of the People Act 1983.</p> <p>[Section 6(7) and (8) of the European Parliamentary Elections Act 2002 (c.24)]<sup>[78]</sup></p>

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
8. Duty to divide constituency into polling districts.	[sections 18A to 18E of, and Schedule A1 to, the Representation of the People Act 1983] <sup>79</sup> .
9. Power to divide electoral divisions into polling districts at local government elections.	Section 31 of the Representation of the People Act 1983.
10. Powers in respect of holding of elections.	Section 39(4) of the Representation of the People Act 1983.
11. Power to pay expenses properly incurred by electoral registration officers.	Section 54 of the Representation of the People Act 1983.
12. Power to fill vacancies in the event of insufficient nominations.	Section 21 of the Representation of the People Act 1985.
13. Duty to declare vacancy in office in certain cases.	Section 86 of the Local Government Act 1972.
14. Duty to give public notice of a casual vacancy.	Section 87 of the Local Government Act 1972.
15. Power to make temporary appointments to parish councils.	Section 91 of the Local Government Act 1972.
[...]	...] <sup>80</sup>
17. Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	Section 10 of the Representation of the People Act 2000 (c.2).
[18. Duty to consult on change of scheme for elections.	Sections 33(2), 38(2) and 40(2) of the 2007 Act.
19. Duties relating to publicity.	Sections 35, 41 and 52 of the 2007 Act.
20. Duties relating to notice to Electoral Commission.	Sections 36 and 42 of the 2007 Act.
21. Power to alter years of ordinary elections of parish councillors.	Section 53 of the 2007 Act.
22. Functions relating to change of name of electoral area.	Section 59 of the 2007 Act.] <sup>81</sup>
<b>E. Functions relating to name and status of areas and individuals</b>	
1. Power to change the name of a county, district or London borough.	Section 74 of the Local Government Act 1972.
2. Power to change the name of a parish.	Section 75 of the Local Government Act 1972.

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
3. Power to confer title of honorary alderman or to admit to be an honorary freeman.	Section 249 of the Local Government Act 1972.
4. Power to petition for a charter to confer borough status.	Section 245b of the Local Government Act 1972.
[[...	...
...	...
...	...
...	...
...	...
...	...
...	...
...	...] <sup>83</sup>
<b>EB. Functions relating to community governance</b>	
1. Duties relating to community governance reviews.	Section 79 of the 2007 Act.
2. Functions relating to community governance petitions.	Sections 80, 83 to 85 of the 2007 Act.
3. Functions relating to terms of reference of review.	Sections 81(4) to (6).
4. Power to undertake a community governance review.	Section 82 of the 2007 Act.
5. Functions relating to making of recommendations.	Sections 87 to 92 of the 2007 Act.
6. Duties when undertaking review.	Sections 93 to 95 of the 2007 Act.
7. Duty to publicise outcome of review.	Section 96 of the 2007 Act.
8. Duty to send two copies of order to Secretary of State and Electoral Commission.	Section 98(1) of the 2007 Act.
9. Power to make agreements about incidental matters.	Section 99 of the 2007 Act.] <sup>82</sup>

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
<p><b>[F. Power to make, amend, revoke, re-enact or enforce byelaws.]<sup>84</sup></b></p> <p><b>[FA. Functions relating to smoke-free premises, etc</b></p> <p>1. Duty to enforce Chapter 1 and regulations made under it.</p> <p>2. Power to authorise officers.</p> <p>3. Functions relating to fixed penalty notices.</p> <p>4. Power to transfer enforcement functions to another enforcement authority.</p> <p><b>G. Power to promote or oppose local or personal Bills.</b></p> <p><b>H. Functions relating to pensions etc.</b></p> <p>1. Functions relating to local government pensions, etc.</p> <p>[2. Functions under the Fire-fighter’s Pension Scheme relating to pensions, etc as respects persons employed by fire and rescue authorities pursuant to section 1 of the Fire and Rescue Services Act 2004]<sup>88</sup></p> <p><b>[I. Miscellaneous functions</b></p> <p>Part I: <i>functions relating to public rights of way</i></p> <p>1. Power to create footpath [, bridleway or restricted byway]<sup>91</sup> by agreement.</p> <p>2. Power to create footpaths [ , bridleways and restricted byways]<sup>91</sup>.</p> <p>3. Duty to keep register of information with respect to maps, statements and declarations.</p>	<p>Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978 (c.30)<sup>85</sup>.</p> <p>Section 10(3) of the 2006 Act.</p> <p>Section 10(5) of, and paragraph 1 of Schedule 2 to, the 2006 Act.</p> <p>Paragraphs 13, 15 and 16 of Schedule 1 to the 2006 Act.</p> <p>Smoke-free (Vehicles Operators and Penalty Notices) Regulations 2007 (S.I. 2006/760).</p> <p>Smoke-free (Premises and Enforcement) Regulations 2006 (S.I. 2006/3368.)<sup>86</sup></p> <p>Section 239 of the Local Government Act 1972.</p> <p>Regulations under section 7, 12 or 24 of the Superannuation Act 1972 (c.11)<sup>87</sup>.</p> <p>[Sections 34 and 36 of the Fire and Rescue Services Act 2004 (c.21)]<sup>89</sup></p> <p>Section 25 of the Highways Act 1980 (c.60).</p> <p>Section 26 of the Highways Act 1980.</p> <p>Section 31A of the Highways Act 1980.</p>



<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
4. Power to stop up footpaths [ , bridleways and restricted byways] <sup>91</sup>	Section 118 of the Highways Act 1980
5. Power to determine application for public path extinguishment order.	Sections 118ZA and 118C(2) of the Highways Act 1980.
6. Power to make a rail crossing extinguishment order.	Section 118A of the Highways Act 1980.
7. Power to make a special extinguishment order.	Section 118B of the Highways Act 1980.
8. Power to divert footpaths [ , bridleways and restricted byways ] <sup>91</sup>	Section 119 of the Highways Act 1980.
9. Power to make a public path diversion order.	Sections 119ZA and 119C(4) of the Highways Act 1980.
10. Power to make a rail crossing diversion order.	Section 119A of the Highways Act 1980.
11. Power to make a special diversion order.	Section 119B of the Highways Act 1980.
12. Power to require applicant for order to enter into agreement.	Section 119C(3) of the Highways Act 1980.
13. Power to make an SSSI diversion order.	Section 119D of the Highways Act 1980.
14. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	Section 121B of the Highways Act 1980.
15. Power to decline to determine certain applications.	Section 121C of the Highways Act 1980.
16. Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980.
17. Duty to serve notice of proposed action in relation to obstruction.	Section 130A of the Highways Act 1980.
18. Power to apply for variation of order under section 130B of the Highways Act 1980.	Section 130B(7) of the Highways Act 1980.
19. Power to authorise temporary disturbance of surface of footpath [ , bridleway or restricted byway ] <sup>91</sup> .	Section 135 of the Highways Act 1980.
20. Power temporarily to divert footpath [ , bridleway or restricted byway ] <sup>91</sup> .	Section 135A of the Highways Act 1980.
21. Functions relating to the making good of damage and the removal of obstructions.	Section 135B of the Highways Act 1980.

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
22. Powers relating to the removal of things so deposited on highways as to be a nuisance.	Section 149 of the Highways Act 1980.
23. Power to extinguish certain public rights of way.	Section 32 of the Acquisition of Land Act 1981 (c.67).
24. Duty to keep definitive map and statement under review.	Section 53 of the Wildlife and Countryside Act 1981 (c.69).
25. Power to include modifications in other orders.	Section 53A of the Wildlife and Countryside Act 1981.
26. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.	Section 53B of the Wildlife and Countryside Act 1981.
[...]	...] <sup>91</sup>
28. Power to prepare map and statement by way of consolidation of definitive map and statement.	Section 57A of the Wildlife and Countryside Act 1981.
29. Power to designate footpath as cycle track.	Section 3 of the Cycle Tracks Act 1984 (c.38).
30. Power to extinguish public right of way over land acquired for clearance.	Section 294 of the Housing Act 1981 (c.68).
31. Power to authorise stopping-up or diversion of footpath [ , bridleway or restricted byway ] <sup>91</sup> .	Section 257 of the Town and Country Planning Act 1990.
32. Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.
33. Power to enter into agreements with respect to means of access.	Section 35 of the Countryside and Rights of Way Act 2000 (c.37).
34. Power to provide access in absence of agreement.	Section 37 of the Countryside and Rights of Way Act 2000.
<i>Part II: other miscellaneous functions</i>	
35. Functions relating to sea fisheries	Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966 (c.38).
36. Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972 (c.70).
37. Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).	Section 112 of the Local Government Act 1972.

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
38. Power to make standing orders as to contracts.	Section 135 of the Local Government Act 1972.
39. Duty to make arrangements for proper administration of financial affairs etc.	Section 151 of the Local Government Act 1972.
40. Power to appoint officers for particular purposes (appointment of “proper officers”).	Section 270(3) of the Local Government Act 1972.
41. Power to make limestone pavement order.	Section 34(2) of the Wildlife and Countryside Act 1981 (c.69).
42. Power to make closing order with respect to take-away food shops.	Section 4 of the Local Government (Miscellaneous Provisions) Act 1982 (c.30).
43. Duty to designate officer as the head of the authority’s paid service, and to provide staff, etc.	Section 4(1) of the Local Government and Housing Act 1989 (c.42).
44. Duty to designate officer as the monitoring officer, and to provide staff, etc.	Section 5(1) of the Local Government and Housing Act 1989.
[44A. Duty to provide staff, etc to persons nominated by monitoring officer.	[Sections 82A(4) and (5) of the Local Government Act 2000 <sup>94</sup> ]93.
44B. Powers relating to overview and scrutiny committee’s (voting rights of co-opted members)	[paragraphs 12 and 14 of Schedule 1 to the Local Government Act 2000.]95]92
45. Duty to approve authority’s statement of accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be).	The Accounts and Audit Regulations 1996 (S.I. 1996/590).
46. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160).
47. Powers relating to the preservation of trees.	Section 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 (S.I. 1999/1892)
[47A. Powers relating to complaints about high hedges.	Part 8 of the Anti-Social Behaviour Act 2003.]96
48. Power to make payments or provide other benefits in cases of maladministration etc.	Section 92 of the Local Government Act 2000.]90
[49. Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption.	Section 13(2) of the Criminal Justice and Police Act 2001 (c.16.)97
[50. Power to make or revoke an order designating a locality as an alcohol disorder zone.	Section 16 of the Violent Crime Reduction Act 2006 (c.38).]98
[51. Power to apply for an enforcement order against unlawful works on common land.	[ Section 41 of the Commons Act 2006.]100]99

<b>(1) Function</b>	<b>(2) Provision of Act or Statutory Instrument</b>
[52. Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference.	[Section 45(2)(a) of the Commons Act 2006.] <sup>102</sup> <sup>101</sup>
[53. Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens.	[Section 45(2)(b) of the Commons Act 2006.] <sup>104</sup> <sup>103</sup>

### Notes

- <sup>1</sup> Substituted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004/2211 Sch.1 para.1 (September 28, 2004)
- <sup>2</sup> Items revoked by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(4)(a) (April 22, 2005)
- <sup>3</sup> Words inserted by Town and Country Planning (Permission in Principle) (Amendment) Order 2017/1309 Sch.2 para.5(2)(a)(i) (June 1, 2018)
- <sup>4</sup> Word inserted by Town and Country Planning (Permission in Principle) (Amendment) Order 2017/1309 Sch.2 para.5(2)(a)(ii) (June 1, 2018)
- <sup>5</sup> Words inserted by Town and Country Planning (Permission in Principle) (Amendment) Order 2017/1309 Sch.2 para.5(2)(b) (June 1, 2018)
- <sup>6</sup> Words inserted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(4)(b) (April 22, 2005)
- <sup>7</sup> Possible drafting error, words are purportedly inserted in item 18 but are more appropriate in item 18A and therefore the amendment is applied to item 18A by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(4)(c) (April 22, 2005)
- <sup>8</sup> 1990 c.8. Section 171E was inserted by section 52 of the Planning and Compulsory Purchase Act 2004.
- <sup>9</sup> Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(2)(d) (October 2, 2007)
- <sup>10</sup> Item revoked by Enterprise and Regulatory Reform Act 2013 (Abolition of Conservation Area Consent) (Consequential and Saving Provisions) (England) Order 2013/2146 Sch.1 para.6(a) (October 1, 2013: revocation has effect subject to savings specified in SI 2013/2146 art.4 and SI 2013/148 art.5(4))
- <sup>11</sup> Words revoked by Enterprise and Regulatory Reform Act 2013 (Abolition of Conservation Area Consent) (Consequential and Saving Provisions) (England) Order 2013/2146 Sch.1 para.6(b) (October 1, 2013: revocation has effect subject to savings specified in SI 2013/2146 art.4 and SI 2013/148 art.5(4))
- <sup>12</sup> Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(2)(b)(i) (October 2, 2007)
- <sup>13</sup> Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4)

Regulations 2007/2593 reg.2(2)(b)(ii) (October 2, 2007)

- 14 Word substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(2)(c) (October 2, 2007)
- 15 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.2(1)(a) (November 23, 2004)
- 16 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.2(1)(b) (November 23, 2004)
- 17 Entry inserted by Town and Country Planning (Brownfield Land Register) Regulations 2017/403 reg.19(2) (April 16, 2017)
- 18 To which there are amendments not relevant to these Regulations.
- 19 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(a) (September 1, 2007)
- 20 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(b) (September 1, 2007)
- 21 Schedules 5ZA was inserted by S.I. 1995/3231, article 5(6).
- 22 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(c) (September 1, 2007)
- 23 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(d) (September 1, 2007)
- 24 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(e) (September 1, 2007)
- 25 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(f) (September 1, 2007)
- 26 Amended by the Local Government Act 1972 , section 204(6) and the Local Government, Planning and Land Act 1980, section 1(6), Schedule 6 paragraph 11 and Schedule 34, Pt VI.
- 27 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.1(1)(a) (November 23, 2004)
- 28 Item substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013/2190 reg.3(a) (October 1, 2013)
- 29 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.1(1)(b) (November 23, 2004)
- 30 Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013/2190 reg.3(b) (October 1, 2013)
- 31 Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013/2190 reg.3(c) (October 1, 2013)
- 32 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(g) (September 1, 2007)
- 33 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(h) (September 1, 2007)
- 34 Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(3)(a) (October 2, 2007)

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- 35 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(i) (September 1, 2007)
- 36 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(j) (September 1, 2007)
- 37 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(k) (September 1, 2007)
- 38 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(l) (September 1, 2007)
- 39 Entry inserted by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(1) para.1 (April 21, 2006)
- 40 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(a) (May 21, 2007)
- 41 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(b) (May 21, 2007)
- 42 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(m) (August 1, 2007)
- 43 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(n) (August 1, 2007)
- 44 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(c) (May 21, 2007)
- 45 Possible drafting error, entry 14D not 14E contains words revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(o) (September 1, 2007)
- 46 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(d) (May 21, 2007)
- 47 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(e) (May 21, 2007)
- 48 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(f) (May 21, 2007)
- 49 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(g) (May 21, 2007)
- 50 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2007/1284 reg.2(2)(h) (May 21, 2007)
- 51 Item revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(3)(c) (October 2, 2007)
- 52 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(p) (September 1, 2007)
- 53 Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2007/1950 reg.2(3)(q) (September 1, 2007)
- 54 Amended by the Local Government Act 1974 (c.7), Schedule 6, paragraph 1, section 18 of the Local Government (Miscellaneous Provisions) Act 1976 (c.57) and section 186 of the Local Government, Planning and Land Act 1980 (c.65). Section 94(8) was substituted by the Deregulation (Public Health Acts Amendment Act) Order 1997 (S.I. 1997/1187).

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- 55 Amended by the Local Government Act 1972, section 204(9) and the London Local Authorities Act 1990 (c. vii), section 20.
- 56 Entry revoked by Deregulation Act 2015 (Poisons and Explosives Precursors) (Consequential Amendments, Revocations and Transitional Provisions) Order 2015/968 Sch.1 para.4 (May 26, 2015)
- 57 Amended by the Fire Safety and Safety of Places of Sport Act 1987 (c.27). See, in particular, Part II of, and Schedule 2 to, that Act.
- 58 Entry substituted by Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018/486 Sch.9 para.12 (October 1, 2018)
- 60 Amended by the Local Government, Planning and Land Act 1980, Schedule 6, paragraph 6, and by section 3 of the Protection of Animals (Amendment) Act 1988.
- 61 Section 46A was inserted by section 1 of the Marriage Act 1994 (c.34).
- 62 Amended by S.I. 1968/658.
- 63 The 1939 Act was amended by the Local Government Act 1972, Schedule 29 paragraph 23. The 1916 Act and the 1939 Act are repealed (prospectively) by the Charities Act 1992 (c.41).
- 64 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.1(2)(a) (November 23, 2004)
- 65 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.1(2)(b)(i) (November 23, 2004)
- 66 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.1(2)(b)(ii) (November 23, 2004)
- 67 Sections 115E, 115F, 115G and 115K were inserted into the Highways Act 1980 (c. 66) by the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 20, Schedule 5, Part I, paragraph 1.
- 68 Amended by section 22 of the Local Government (Miscellaneous Provisions) Act 1982 (c.30).
- 69 Amended by regulation 2 of the Meat Products (Hygiene) (Amendment) Regulations 1999 (S.I. 1999/683).
- 70 Amended by S.I. 1996/1699.
- 71 Schedule 1A was inserted by S.I. 2000/930.
- 72 Entries inserted subject to the operation of arrangements as specified in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 Sch.1(I) para.1 (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)
- 73 Entry added by Motor Salvage Operators Regulations 2002/1916 reg.6 (October 21, 2002)
- 74 Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.4 (November 28, 2008)
- 75 As to the commencement of Part 1 of the Commons Act 2006 see in relation to England generally, the Commons Act 2006 (Commencement No. 3, Transitional Provisions and Savings) (England) Order 2007 (S.I. 2007/2584), and in relation to the pilot areas, the Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008 (S.I. 2008/1960).
- 76 For the definition of “the relevant statutory provisions” see section 53(1) of the Health and Safety at Work etc. Act 1974. See also the definitions of “the existing statutory provisions” and “health and safety regulations” in section 53(1) and, as to “health and safety regulations”, section 15(1) of that Act which was substituted by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 5.
- 77 Subsection (4) of section 52 was substituted by the Representation of the People Act 1985 (c.50),



Schedule 4.

- 78 Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(4)(a) (October 2, 2007)
- 79 Words substituted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(4)(b) (October 2, 2007)
- 80 Item revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(4)(c) (October 2, 2007)
- 81 Entries inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.5(a) (March 31, 2008)
- 82 Entries inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.5(b) (March 31, 2008)
- 83 Entry revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.5 (November 28, 2008)
- 84 Words substituted by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(1) para.2 (April 21, 2006)
- 85 Section 14 of the Interpretation Act 1978 is applied to byelaws made under section 235 of the Local Government Act 1972 by section 22(1) of, and paragraph 3 of Part I of Schedule 2 to, the Interpretation Act 1978.
- 86 Item inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 4) Regulations 2007/2593 reg.2(5) (October 2, 2007)
- 87 As to section 7 see also section 99 of the Local Government Act 2000 (c.22). Section 12 of the Superannuation Act 1972 is amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7).
- 88 Words substituted by Fire and Rescue Services Act 2004 (Consequential Amendments) (England) Order 2004/3168 art.53(a) (December 30, 2004)
- 89 Words substituted by Fire and Rescue Services Act 2004 (Consequential Amendments) (England) Order 2004/3168 art.53(b) (December 30, 2004)
- 90 Substituted subject to the operation of arrangements as specified in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 Sch.1(I) para.2 (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)
- 91 Words substituted by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006/1177 Sch.1(II) para.1 (July 2, 2006 in relation to England; July 11, 2006 otherwise)
- 92 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.2(2)(a) (November 23, 2004)
- 93 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.2(2)(b)(i) (November 23, 2004)
- 94 Sections 82A(4) and (5) of the Local Government Act 2000 (c. 22) were inserted by section 113 of the Local Government Act 2003 (c. 26).
- 95 Words inserted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(1) para.2(2)(b)(ii) (November 23, 2004)
- 96 Entry inserted by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2005/714 reg.2(2) (June 1, 2005)
- 97 Entry substituted by Local Authorities (Alcohol Consumption in Designated Public Places) Regulations

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2007/806 reg.10(2)(b) (April 6, 2007)

**98** Entry inserted by Local Authorities (Alcohol Disorder Zones) Regulations 2008/1430 Pt 6 reg.25 (June 5, 2008)

**99** Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.6(a) (November 28, 2008)

**100** Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.6(b) (November 28, 2008)

**101** Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.6(c) (November 28, 2008)

**102** Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.6(d) (November 28, 2008)

**103** Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.6(e) (November 28, 2008)

**104** Entry inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 3) Regulations 2008/2787 reg.6(f) (November 28, 2008)

### **Commencement**

Sch. 1 para. 1: November 16, 2000

### **Extent**

Sch. 1 para. 1: England

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(Green)

Part 3.79

(October 2018)

## SCHEDULE 2

### FUNCTIONS WHICH MAY BE (BUT NEED NOT BE) THE RESPONSIBILITY OF AN AUTHORITY'S EXECUTIVE

#### Regulation 3(1)

#### 1.

Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1.

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**Commencement**

Sch. 2 para. 1: November 16, 2000

**Extent**

Sch. 2 para. 1: England

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#### 2.

The determination of an appeal against any decision made by or on behalf of the authority.

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**Commencement**

Sch. 2 para. 2: November 16, 2000

**Extent**

Sch. 2 para. 2: England

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#### 3.

The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998<sup>1</sup>.

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**Notes**

<sup>1</sup> Section 34(4) replaces section 63(3) of the Social Security Administration Act 1992. The Council Tax Benefit Regulations 1992 (S.I. 1992/1814) and the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), to which there are amendments not relevant to these Regulations, continue to have effect, by virtue of section 17(2)(b) of the Interpretation Act 1978 (c.30), notwithstanding the repeal of section 63(3) of the Social Security Administration Act 1992.

**Commencement**

Sch. 2 para. 3: November 16, 2000

**Extent**

Sch. 2 para. 3: England

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**[4.**

The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools<sup>2</sup>.

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**Notes**

- ¹ Substituted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(2) para.1 (November 23, 2004)
- ² See, in particular, section 52 of the Education Act 2002 (c. 32) and the subordinate legislation made under that section which replace section 67 of, and Schedule 18 to, the School Standards and Framework Act 1998 (c. 31) which have been repealed.

**Commencement**

Sch. 2 para. 4: November 16, 2000

**Extent**

Sch. 2 para. 4: England

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**[5.**

The making of arrangements pursuant to sections 94(1), (1A) and (4) of the 1998 Act (admissions appeals)<sup>2</sup>.

]¹

**Notes**

- ¹ Substituted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(2) para.1 (November 23, 2004)
- ² Section 94(1A) of the School Standards and Framework Act 1998 (“the SSFA 1998”) was inserted by the Education Act 2002. See also subordinate legislation made under section 94(5) of the SSFA 1998, as substituted by the Education Act 2002, which replaces Schedule 24 to the SSFA 1998.

**Commencement**

Sch. 2 para. 5: November 16, 2000

**Extent**

Sch. 2 para. 5: England

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## **[6.**

The making of arrangements pursuant to section 95(2) of the 1998 Act (children to whom section 87 applies; appeals by governing bodies)<sup>2</sup>.

] <sup>1</sup>

### **Notes**

- 1** Substituted by Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004/2748 Sch.1(2) para.1 (November 23, 2004)
- 2** Section 94(1A) of the School Standards and Framework Act 1998 (“the SSFA 1998”) was inserted by the Education Act 2002. See also subordinate legislation made under section 94(5) of the SSFA 1998, as substituted by the Education Act 2002, which replaces Schedule 24 to the SSFA 1998.

### **Commencement**

Sch. 2 para. 5: November 16, 2000

### **Extent**

Sch. 2 para. 5: England

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## **7.**

The making of arrangements under section 20 (questions on police matters at council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority.

### **Commencement**

Sch. 2 para. 7: November 16, 2000

### **Extent**

Sch. 2 para. 7: England

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## **8.**

The making of appointments under paragraphs 2 to 4 (appointment of members by relevant councils) of schedule 2 (police authorities established under section 3) to the Police Act 1996.

### **Commencement**

Sch. 2 para. 8: November 16, 2000

### **Extent**

Sch. 2 para. 8: England

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## **9. [...] <sup>1</sup>**

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(Green)

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**Notes**

- <sup>1</sup> Revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.7(a) (April 1, 2008)
- 

**10.**

Any function relating to contaminated land<sup>1</sup>.

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**Notes**

- <sup>1</sup> Part IIA of the Environmental Protection Act 1990 (c.43) and subordinate legislation under that Part.

**Commencement**

Sch. 2 para. 10: November 16, 2000

**Extent**

Sch. 2 para. 10: England

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**11.**

The discharge of any function relating to the control of pollution or the management of air quality<sup>1</sup>.

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**Notes**

- <sup>1</sup> See the Pollution Prevention and Control Act 1999 (c.24), Part IV of the Environment Act 1995 (c.25), Part I of the Environmental Protection Act 1990 (c.43) and the Clean Air Act 1993 (c.11).

**Commencement**

Sch. 2 para. 11: November 16, 2000

**Extent**

Sch. 2 para. 11: England

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**12.**

The service of an abatement notice in respect of a statutory nuisance<sup>1</sup>

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**Notes**

- <sup>1</sup> Section 80(1) of the Environmental Protection Act 1990.
-

**Commencement**

Sch. 2 para. 12: November 16, 2000

**Extent**

Sch. 2 para. 12: England

**13.**

The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area<sup>1</sup>.

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**Notes**

<sup>1</sup> Section 8 of the Noise and Statutory Nuisance Act 1993 (c.40).

**Commencement**

Sch. 2 para. 13: November 16, 2000

**Extent**

Sch. 2 para. 13: England

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**14.**

The inspection of the authority's area to detect any statutory nuisance<sup>1</sup>.

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**Notes**

<sup>1</sup> Section 79 of the Environmental Protection Act 1990.

**Commencement**

Sch. 2 para. 14: November 16, 2000

**Extent**

Sch. 2 para. 14: England

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**15.**

The investigation of any complaint as to the existence of a statutory nuisance<sup>1</sup>.

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**Notes**

<sup>1</sup> Section 79 of the Environmental Protection Act 1990.

**Commencement**

Sch. 2 para. 15: November 16, 2000

**Extent**

Sch. 2 para. 15: England

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**16.**

The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.

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**Commencement**

Sch. 2 para. 16: November 16, 2000

**Extent**

Sch. 2 para. 16: England

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**17.**

The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

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**Commencement**

Sch. 2 para. 17: November 16, 2000

**Extent**

Sch. 2 para. 17: England

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**18.**

The making of agreements for the execution of highways works<sup>1</sup>.

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**Notes**

<sup>1</sup> Section 278 of the Highways Act 1980 (c.66), substituted by the New Roads and Street Works Act 1991 (c.22), section 23.

**Commencement**

Sch. 2 para. 18: November 16, 2000

**Extent**

Sch. 2 para. 18: England

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**19.**

The appointment of 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 the revocation of any such appointment

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**Commencement**

Sch. 2 para. 19(a)-(c): November 16, 2000

**Extent**

Sch. 2 para. 19(a)-(c): England

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**[20.**

The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.

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**Notes**

¹ Inserted subject to the operation of arrangements as specific in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 Sch.1(II) para.1 (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)

**Extent**

Sch. 2 para. 20: England

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**[21.**

Any function of a local authority in their capacity as a harbour authority (to the extent that the function does not fall within paragraph 1 of this Schedule.

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**Notes**

¹ Inserted subject to the operation of arrangements as specific in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 Sch.1(II) para.1 (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)

**Extent**

Sch. 2 para. 21: England

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**[22.**

Functions under section 106, 110, 111 and 113 of the 2007 Act relating to local area agreements.

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**Notes**

¹ Added by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.7(b) (March 31, 2008)

**Extent**

Sch. 2 para. 22: England

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### SCHEDULE 3

#### FUNCTIONS NOT TO BE THE SOLE RESPONSIBILITY OF AN AUTHORITY'S EXECUTIVE

#### Regulation 4(1)

(1) <i>Plans and strategies</i>	(2) <i>Reference</i>
Annual Library Plan	Section 1(2) of the Public Libraries and Museums Act 1964 (c.75)
Best Value Performance Plan	Section 6(1) of the Local Government Act 1999 (c.27) <sup>1</sup>
[ Children and Young People's Plan] <sup>2</sup>	[Children and Young People's Plan (England) Regulations 2005. ] <sup>3</sup>
[...]	...] <sup>4</sup>
[...]	...] <sup>5</sup>
Crime and Disorder Reduction Strategy	Sections 5 and 6 of the Crime and Disorder Act 1998 (c.37).
[Development plan documents] <sup>7</sup>	[ Section 15 of the 2004 Act.] <sup>8</sup> <sup>6</sup>
[Licensing Authority Policy Statement] <sup>9</sup>	[ section 349 of the 2005 Act.] <sup>10</sup>
[...]	...] <sup>11</sup>
[...]	...] <sup>12</sup>
[Local Transport Plan	Section 108(3) of the Transport Act 2000 (c.38).] <sup>13</sup>
Plans and alterations which together comprise the Development Plan	(a) for Greater London and the metropolitan counties, section 27 of the Town and Country Planning Act 1990 (c.8) <sup>14</sup>  (b) for districts outside Greater London and the metropolitan counties, section 54 of that Act.
[Sustainable Community Strategy	[ Section 4 of the 2000 Act.] <sup>16</sup> <sup>15</sup>
Youth Justice Plan	Section 40 of the Crime and Disorder Act 1998 (c.37)

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## Notes

- <sup>1</sup> See the Local Government (Best Value) Performance Plans and Reviews Order 1999 (S.I. 1999/3251). Relevant guidance issued under section 6(4) of the Local Government Act 1999 may be found in Department of the Environment, Transport and the Regions Circular 10/99.
- <sup>2</sup> Words substituted by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(2) para.3(a) (April 21, 2006)
- <sup>3</sup> Words substituted by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(2) para.3(b) (April 21, 2006)
- <sup>4</sup> Words revoked by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(2) para.3(d) (April 21, 2006)
- <sup>5</sup> Entry revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.6(2)(b) (March 31, 2008)
- <sup>6</sup> Words inserted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(5)(a) (April 22, 2005)
- <sup>7</sup> Functions relating to local development documents which are not development plan documents are the responsibility of the executive of an authority.
- <sup>8</sup> Words inserted by Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929 reg.2(5)(b) (April 22, 2005)
- <sup>9</sup> Words substituted by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(2) para.3(e) (April 21, 2006)
- <sup>10</sup> Possible drafting error - words are purportedly substituted in the entry for "Community Care Plan", but that entry has been repealed and the substitution is instead made in the new entry for "Licensing Authority Policy Statement" by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(2) para.3(f) (April 21, 2006)
- <sup>11</sup> Words revoked by Local Authorities (Functions and Responsibilities) (England) (Amendment No. 2) Regulations 2008/744 reg.2(2)(b) (April 1, 2008)
- <sup>12</sup> Possible drafting error - words in column 2 of the revoked entry for "Education Development Plan" are revoked, and not the words in column 2 of the entry for "Licensing Authority Policy Statement" which are purportedly revoked by Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006/886 Sch.1(2) para.3(h) (April 21, 2006)
- <sup>13</sup> Inserted subject to the operation of arrangements as specific in SI 2001/2212 reg.1 by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001/2212 Sch.1(III) para.1 (July 10, 2001 except in relation to local authorities as specified in SI 2001/2212 reg.1)
- <sup>14</sup> Relevant amendments are made by the Planning and Compensation Act 1991 (c.34), Schedule 4, paragraph 29.
- <sup>15</sup> Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.6(2)(e) (March 31, 2008)
- <sup>16</sup> Words inserted by Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008/516 reg.6(2)(f) (March 31, 2008)

## Commencement

Sch. 3 para. 1: November 16, 2000

## Extent

Sch. 3 para. 1: England

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(Green)

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(October 2018)

## SCHEDULE 4

### CIRCUMSTANCES IN WHICH FUNCTIONS ARE NOT TO BE THE RESPONSIBILITY OF AN AUTHORITY'S EXECUTIVE

#### Regulation 5(1)

(1)	(2)
<i>Function</i>	<i>Circumstances</i>
1. The adoption or approval of a plan or strategy (whether statutory or non-statutory), other than a plan or strategy of a description referred to in regulation 4(1)(b) or Schedule 3.	The authority determines that the decision whether the plan or strategy should be adopted or approved should be taken by them.
2. The determination of any matter in the discharge of a function which:	The individual or body by whom, by virtue of any of sections 14 to 17 of the Local Government Act 2000 or provision made under section 18 or 20 of that Act, the determination is to be made
(a) is the responsibility of the executive; and	(a) is minded to determine the matter contrary to, or not wholly in accordance with:
(b) is concerned with the authority's budget, or their borrowing or capital expenditure.	(i) the authority's budget; or
	(ii) the plan or strategy for the time being approved or adopted by the authority in relation to their borrowing or capital expenditure; and
	(b) is not authorised by the authority's executive arrangements, financial regulations, standing orders or other rules or procedures to make a determination in those terms.
3. The determination of any matter in the discharge of a function:	The individual or body by whom, by virtue of any of sections 14 to 17 of the Local Government Act 2000 or provision made under section 18 or 20 of that Act, the determination is to be made, is minded to determine the matter in terms contrary to the plan or, as the case may be, the strategy adopted or approved by the authority.
(a) which is the responsibility of the executive; and	
(b) in relation to which a plan or strategy (whether statutory or non-statutory) has been adopted or approved by the authority.	

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#### Commencement

Sch. 4 para. 1: November 16, 2000

#### Extent

Sch. 4 para. 1: England

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(Green)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part II of the Local Government Act 2000 provides for the discharge of a local authority's functions by an executive of the authority (which must take one of the forms specified in section 11(2) to (5) of the Act), unless those functions are specified as functions that are not to be the responsibility of the authority's executive.

These Regulations specify functions that are not to be the responsibility of an authority's executive or are to be the responsibility of such an executive only to a limited extent or only in specified circumstances.

Regulation 2(1) of these Regulations provides that the functions listed in Schedule 1 ("Schedule 1 functions") are not to be the responsibility of an authority's executive.

Regulation 2(2) provides that the function of imposing conditions, limitations, restrictions or other terms on any approval, consent, licence, permission or registration granted in the exercise of Schedule 1 functions, or functions under a local Act (unless in that case the approval, consent, licence, permission or registration was granted by an authority's executive), is not to be the responsibility of an authority's executive

Regulation 2(3) provides that the function of determining whether, and in what manner, to enforce contraventions of approvals, consents, licences, permissions or registrations granted in the exercise of Schedule 1 functions, or functions under a local Act (unless in that case the approval, consent, licence, permission or registration was granted by an authority's executive), is not to be the responsibility of an authority's executive. It also provides that the function of determining whether, and in what manner, to enforce other contraventions, in relation to matters for which an approval, consent, licence, permission or registration should have been sought, is not to be the responsibility of an authority's executive where the approval, consent, licence, permission or registration could have been granted in the exercise of Schedule 1 functions.

Regulation 2(4) provides that the function of amending, modifying, varying or revoking any approval, consent, licence, permission or registration to which regulation 2(2) applies is not to be the responsibility of an authority's executive.

Regulation 2(5) provides that the function of making any scheme authorised or required by regulations under section 18 of the Local Government and Housing Act 1989 (schemes for basic, attendance and special responsibility allowances for local authority members) or of amending, revoking or replacing any such scheme, is not to be the responsibility of an authority's executive.

Regulation 2(6) provides that the functions of determining the amount of various allowances payable to members of local authorities under the Local Government Act 1972 ("the 1972 Act"), the rates at which certain payments under that Act by way of allowances are to be made, the amounts payable under schemes under section 18 of the Local Government and Housing Act 1989 and the rates of payments under such schemes, are not to be the responsibility of an authority's executive. It also provides that the function of determining whether a charge should be made for any approval,

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consent, licence, permit or registration granted or issued in the exercise of Schedule 1 functions, and the amount of any such charge, are not to be the responsibility of an authority's executive.

The effect of regulation 2(7) is to prevent an authority from arranging for the discharge of the functions specified in regulation 2(5) or (6)(a) to (c) by a committee, sub-committee or officer. (Other functions referred to in regulation 2 which are not the responsibility of an authority's executive may be discharged by a committee, sub-committee or officer of the authority under arrangements under section 101 of the 1972 Act.)

Regulation 2(8) provides, within one exception, that the making of arrangements for the discharge of functions under section 101(5) of the 1972 Act and the appointment of committees under section 102 of the 1972 Act is not to be the responsibility of an authority's executive. The exception relates to provision made in regulations under section 20 of the Local Government Act 2000, which may allow the executive of an authority to make appointments under section 102 of the 1972 Act.

Regulation 2(9) and (10) makes special provision in relation to York City Council's functions relating to the management of the Yorkshire Museum and Gardens and to South Lakeland District Council's functions relating to the management of land at Lake Windermere. None of the functions referred to in those paragraphs is to be the responsibility of the relevant Council's executive.

Regulation 2(11) and (12) precludes an authority's executive from discharging functions which, in accordance with any public or local Act, or any subordinate legislation, must be discharged by the authority themselves, unless the discharge of the function by the executive is authorised by any other provision of these Regulations.

Regulation 3(1) provides that the functions mentioned in Schedule 2 may be (but need not be) the responsibility of an authority's executive.

Regulation 3(2) provides that Hastings Borough Council's functions relating to the management of the Hastings and Saint Leonard's Museum may be (but need not be) the responsibility of an authority's executive, and paragraphs (3) and (4) of that regulation make consequential and supplementary provision where those functions are the responsibility of the Council's executive.

Paragraphs (1) to (3) of regulation 4 allocate responsibility for various aspects of functions relating to the formulation and preparation of plans and strategies of the descriptions specified in Schedule 3 between an authority and their executive. They also apply to other plans and strategies whose adoption or approval is a matter for determination by the authority themselves in accordance with regulation 5(1). Paragraph (4) of regulation (4) allocates responsibility for the amendment, modification, variation or revocation of the plans and strategies specified in Schedule 3. Paragraphs (5) to (7) of regulation 4 make similar provision in relation to functions concerned with the disposal of an authority's housing land.

Where an aspect of a function referred to in paragraph (1), (4) or (5) of regulation 4 is not to be the responsibility of an authority's executive, paragraph (8) of that regulation has the effect that the authority may not arrange for it to be discharged by any of their committees, sub-committees or officers.

Paragraphs (9) to (11) of regulation 4 allocate responsibility for various aspects of functions relating to council tax, precepts and other calculations under the Local Government Finance Act 1992. To the extent that the function relates to the preparation and revision of estimates and other amounts for consideration by an authority it is to be the responsibility of an authority's executive. Other

aspects of the function, such as the setting of an amount of council tax for a financial year, are to be the responsibility of the authority.

Regulation 5(1) and Schedule 4 specify the circumstances in which certain functions, that would otherwise be the responsibility of an authority's executive, are not to be the responsibility of such an executive. The circumstances are listed in column (2) of Schedule 4, and the functions to which they relate are listed in column (1). An exception is provided in regulation 5(2) for certain determinations that need to be made as a matter of urgency. In those cases, the determination can be made by the authority's executive only with the prior written agreement of a chairman of a relevant overview and scrutiny committee (defined in regulation 5(3)) or, in specific circumstances, of the chairman or vice-chairman of the authority. Regulation 5(4) requires the individual or body by whom the determination is made to submit a report to the authority of the action taken.

The effect of regulation 5(5) is to prevent an authority from arranging for the discharge by a committee, sub-committee or officer of functions which, in accordance with regulation 5(1), are the responsibility of the authority.

## Modifications

Provision	Modification	Notes	Further Information
<b>reg. 2(1)</b>	Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008/1419, reg. 4(4)		
<b>reg. 2(6E)</b>	Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008/2113, Sch. 1 para. 1(c)		Pt 2 reg. 6
<b>Sch. 1 para. 1</b>	Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008/2113, Sch. 1 para. 1(d)		Pt 2 reg. 6
	Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008/2113, Sch. 1 para. 1(e)		Pt 2 reg. 6
<b>Sch. 2 para. 22</b>	Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008/2113, Sch. 1 para. 1(f)		Pt 2 reg. 6

**COUNCIL PROCEDURE RULES**

**SECTION 1 – COUNCIL MEETINGS**

**1. ANNUAL MEETING OF THE COUNCIL**

**1.1 Timing and Business**

In a year when there is an ordinary election of councillors, the annual meeting will take place on the third Tuesday after the elections. In any other year, the annual meeting will take place in April or May. No business except that identified below in this Rule and Rule 1.2 will be included on the Agenda of the Annual Council meeting and all other Council Procedure Rules shall be construed accordingly.

The annual meeting will:

- (i) Receive a report from the Returning Officer on the return of Members elected (if it is the annual meeting following the District Council Elections);
- (ii) Receive apologies for absence;
- (iii) Elect a person to preside if the Chairman and Vice-Chairman of the Council are not present;
- (iv) Receive any announcements from the retiring Chairman of the Council;
- (v) Elect the Chairman of the Council for the ensuing year;
- (vi) Elect the Vice-Chairman of the Council for the ensuing year;
- (vii) Receive any announcements from the Chairman and/or the Chief Executive;
- (viii) Receive notification of memberships of political groups and the names of the Group Leaders and their Deputies (if it is the annual meeting immediately following the District Council Elections);
- (ix) Elect the Leader of the Council (if it is the annual meeting immediately following the District Council Elections);
- (x) Selection of Councillors on Committees etc in accordance with Council Procedure Rule 1.2;
- (xi) Reaffirm the Council's Constitution;



- (xii) Approve a programme of ordinary meetings of the Council and Committees for the year;
- (xiii) Appoint up to four Members, with each Member being a Member Authority Representative to serve on/at the General Assembly of the Local Government Association. Two of the Members appointed will always be the Leader and Deputy Leader of the Council. Up to two further names can be put forward to Council by the Leader of the Council, following consultation with Group Leaders; and
- (xiv) Consider any other business set out in the notice convening the meeting.

### **1.2 Selection of Councillors on Committees**

At the annual meeting, the Council will:

- (i) Appoint the Committees and Sub-Committees it considers appropriate for the municipal year;
- (ii) Decide the size and the terms of reference and delegated powers for any new Committees and Sub-Committees;
- (iii) Decide the allocation of seats for all Committees and Sub-Committees to political groups in accordance with the political balance rules; and
- (iv) Appoint Members to each Committee and Sub-Committee and the Chairman and Vice-Chairman of each Committee and Sub-Committee as appropriate.

## **2. BUDGET AND COUNCIL TAX SETTING**

At the relevant ordinary meeting of the Council, when the Council's Budget and Council Tax is approved and set, no business except that identified below will be included on the Agenda of the Budget and Council Tax Setting Meeting and all other Council Procedure Rules shall be construed accordingly. The Budget and Council Tax Setting Meeting shall:

- (i) Receive apologies for absence;
- (ii) Elect a person to preside if the Chairman and Vice-Chairman of the Council are not present;
- (iii) Deal with any business required by Statute to be dealt with before any other business;
- (iv) Approve the minutes of the last meeting;
- (v) Receive any announcements from the Chairman and/or the Chief Executive and any Statements from the Leader of the Council and/or members of the Cabinet;

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- (vi) Approve and set the Council's Budget and Council Tax;
  - (vii) Deal with any business remaining from the last Council meeting; and
  - (viii) Consider any Urgent Matters for Debate

Matters which are not on the agenda and which a Member considers should be reported urgently to the Council may, with the consent of, and in a form approved by, the Chairman, be brought before the meeting by way of a short written statement which shall be read by the Chief Executive, Section 151 Officer or the Monitoring Officer, as part of his or her reports and communications. The Member concerned may, by leave of the Chairman, speak on the statement and move a motion unless advised otherwise by the Chief Executive, Section 151 Officer or Monitoring Officer.

Any amendment proposed to be made to the Cabinet's budget proposals must have been submitted to the Council's Section 151 Officer at least two working days before the Budget Full Council meeting(s) to enable them to consider the implications for the budget. The text and form of any and all such amendments must be emailed to the Committee Services Manager by no later than 5.00 p.m. on the day of the Budget Full Council meeting in order that copies of same can be printed and placed on Members' seats prior to the commencement of the Council meeting.

In addition, the text of the Leader of the Council's budget presentation speech must also be emailed to the Committee Services Manager by no later than 5.00 p.m. on the day of the Budget Full Council meeting in order that copies of same can be printed and placed on Members' seats prior to the commencement of the Council meeting. The Committee Services Manager will also email the speech to all Members of the Council as soon as possible after they receive it from the Leader of the Council.

### **3. ORDINARY MEETING**

Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. Such programmes shall ensure that the first ordinary meeting is held within 15 working days of the annual meeting of the Council except in a year when there is an ordinary election of Councillors. The order of business at every ordinary meeting of the Council be as follows:

- (i) To receive apologies for absence;
- (ii) To elect a person to preside if the Chairman and Vice Chairman are not present;
- (iii) To deal with any business required by Statute to be dealt with before any other business;
- (iv) To approve the minutes of the last meeting (or in the case of the first ordinary meeting of the municipal year, to approve the minutes of the Annual meeting and the preceding meeting);

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- (v) To receive any announcements from the Chairman and the Chief Executive and any statements from the Leader and Members of the Cabinet;
  - (vi) To deal with any Petitions;
  - (vii) In accordance with Rule 10, to receive questions from, and provide answers to the public in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the meeting;
  - (viii) To receive a report from the Leader on any Cabinet decisions taken as a matter of urgency in accordance with Access to Information Procedure Rule 16.2, Budget and Policy Framework Procedure Rule 6(b) and Overview and Scrutiny Procedure Rule 18(i);
  - (ix) To deal with any business from the last Council meeting;
  - (x) To receive the minutes of Committees (with the exception of the Licensing and Registration and Planning Committees) and to receive questions and answers from Councillors on any of those items;
  - (xi) To receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
  - (xii) To consider motions (in the order in which notice has been received);
  - (xiii) To consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's Budget and Policy Framework, other reports from the Cabinet, reports of the Overview and Scrutiny Committees, or other Committees for debate and reports from Officers for consideration;
  - (xiv) To receive questions from Members in accordance with Rule 11.2; and
  - (xv) Urgent matters for Debate

Matters which are not on the Agenda and which a Member considers should be reported urgently to the Council may, with the consent of, and in a form approved by, the Chairman, be brought before the meeting by way of a short written statement which shall be read by the Chief Executive, Section 151 Officer or Monitoring Officer, as part of his or her reports and communications. The Member concerned may, by leave of the Chairman, speak on the statement and move a motion unless advised otherwise by the Chief Executive, Section 151 Officer or Monitoring Officer.

With the exception of items (i) (ii) (iii) and (iv), the order of items may be varied at the discretion of the Chairman or by a resolution passed on a motion (which need not be in writing) duly moved and seconded, which shall be put without discussion. At the last ordinary

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meeting of the Council in the municipal year, following item (v) the meeting will receive the annual State of Tending Statement from the Leader.

**4. EXTRAORDINARY MEETINGS**

**4.1 Calling Extraordinary Meetings**

An extraordinary meeting of the Council may be called in the following circumstances:-

1. An extraordinary meeting of the Council may be called at any time by the Chairman of the Council.
2. If the Chairman refuses to call an extraordinary meeting of the Council after a requisition for that purpose, signed by five members of the Council, has been presented to him, or if, without so refusing, the Chairman does not call an extraordinary meeting within seven days after the requisition has been presented to him, then any five members of the Council, on that refusal or on the expiration of those seven days, as the case may be, may forthwith call an extraordinary meeting of the Council.
3. The Council by resolution; and
4. The Monitoring Officer in circumstances where a Section 5 report is to be presented.

**4.2 Holding Extraordinary Meetings in the corresponding circumstances set out above**

1. The Chairman of the Council, in consultation with the Chief Executive, will decide the date of the meeting.
2. Where such a request is received the meeting will be held within 14 days of the receipt of the call for an extraordinary meeting from those five members of the Council.
3. The Council as part of its resolution will fix the date of the extraordinary meeting or will delegate that matter to the Chairman of the Council.
4. Where such a request is received the meeting will be held within 14 days of the receipt of the call for an extraordinary meeting from the Monitoring Officer.

**4.3 Order of Business**

- (i) To receive apologies for absence;
- (ii) To elect a person to preside if the Chairman and Vice-Chairman are not present;
- (iii) To deal with any business required by Statute to be dealt with before any other business;

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(iv) To consider any other business specified in the summons to the meeting.

**5. TIME AND PLACE OF MEETINGS**

The time and place of Council meetings will be notified in the summons.

Meetings will normally be held at 7.30 p.m. in the Princes Theatre, Town Hall, Clacton-on-Sea and the Council may, from time to time, vary the place, date or hour of a meeting or meetings. Where it is not practicable for the Council to meet to agree a variation, such variation shall be determined by the Chairman (or failing him the Vice-Chairman) of the Council.

In accordance with the approved Protocol for such matters, the Council will make audio and/or audio-visual live stream and recording of meetings of the Full Council, which will be made available on the Council's website for a period of at least one year from the date of the relevant meeting.

**6. NOTICE OF AND SUMMONS TO MEETING**

The Committee Services Manager will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. In addition to sending an electronic notification, at least five clear days before a meeting, the Committee Services Manager will send a summons by post to every member of the Council or leave it at their usual place of residence. Although this is the default position, all members of the Council are encouraged to opt out of receiving paper copies and elect to solely receive the summons via electronic notification at least five clear working days before the meeting. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

**7. CHAIRING OF MEETINGS**

The person presiding may exercise any power or duty of the Chairman. Where these rules apply to Committee and Sub-Committee meetings, references to the Chairman also include the Chairman of Committees and Sub-Committees.

**8. QUORUM**

The quorum of a meeting will be one quarter of the whole number of Members, subject always to a minimum of three Members.

If, at the scheduled commencement time of the meeting, there is not a quorum present, the Chairman will be permitted to delay the start of proceedings for up to a maximum period of 15 minutes. This will be in order to allow time for Members, who may have been delayed for some reason, to arrive. If, at the end of that 15 minute period, the Chairman counts the number of Members present and again declares there is not a quorum present the Chairman will declare the meeting to be null and void and cancelled for administrative purposes. The business will stand to be considered at a new time and date to be fixed by the Chairman. If

the Chairman does not fix such a date, the business will be considered at the next ordinary meeting.

During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. The Chairman will decide at that point the duration of that adjournment. If it is not possible to resume the meeting on that date any remaining business will be considered at a time and date to be fixed by the Chairman. If the Chairman does not fix a date, the remaining business will be considered at the next ordinary meeting.

**9. DURATION OF MEETING**

**9.1** The business of ordinary meetings of the Council shall cease at 10.30 p.m. (or after a duration of three hours, whichever is the earliest) on the day on which the meeting commenced, or such earlier, or later, time as the Chairman shall consider appropriate. In the event that the Chairman wishes to extend the meeting beyond 10.30 p.m. (or beyond three hours) they will be expected to give an indication of the length of that extension and secure the consent of the Council in doing so.

**9.2** When the business of a meeting is terminated in accordance with 9.1 above any remaining business shall stand adjourned until a date and time to be fixed by the Chairman.

**9.3** Where 9.2 applies, given that the agenda and associated reports and papers for the original meeting have been published, the adjourned meeting can be called as soon as practicable and without necessary delay, having regard to the remaining business and venue availability. In the case of Committees and Sub-Committees, where Substitutes have been appointed the same Members should attend (the Substituted Members must not take their seats).

**9.4** Notice of the adjourned meeting will be published on the Council's website, unless the adjourned meeting is held within 24 hours.

**10. QUESTIONS BY THE PUBLIC**

**10.1 Scope of Questions and Time Allocated in the Meeting**

Members of the public may ask questions of the relevant Members of the Cabinet or the Leader or Committee Chairmen on any matter in relation to which the Council has powers or duties or which affects the Tendring District. The time limit for the asking of each question is two minutes and for the reply, five minutes. The Chairman shall determine the number of questions to be tabled at a particular meeting in order to limit the time for questions and answers to 21 minutes.

Questions shall not be submitted to the Annual Meeting of the Council or to an Extraordinary Meeting of the Council or to the Budget and Council Tax setting meeting of the Council.

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**10.2 Order of Questions**

Questions will be asked in the order in which notice of them was received, except that the Chairman may group together similar questions.

**10.3 Notice of Questions**

A question may only be asked if notice has been given by delivering it in writing or by personal e-mail to the Committee Services Manager no later than midday 8 working days before the day of the meeting. Each question must give the name and address of the questioner and must name the Member of the Council to whom it is to be put.

**10.4 Number of Questions**

At any one meeting no person may submit more than one question and no more than one such question may be asked on behalf of one organisation.

**10.5 Reasons for Rejection of Questions**

The Committee Services Manager and/or Monitoring Officer may reject a question if in their judgement it:

- (a) is not about a matter for which the local authority has a responsibility or which affects the District;
- (b) is defamatory, frivolous or offensive;
- (c) is substantially the same as a question already received to be put to the ordinary meeting of the Council in question;
- (d) is substantially the same as a question which has been put at a meeting of the Council in the past six months;
- (e) requires the disclosure of confidential or exempt information; or
- (f) the question is about a matter that is subject to call in or ongoing legal proceedings.

**10.6 Record of Questions**

The Committee Services Manager will keep a copy of each question for six years after the meeting at which the question was put and will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for rejection.

**10.7 Asking the Question at the Meeting**

All questions will be set out in the agenda and the Chairman will invite the questioner to put the question to the Member named in the notice. There will be no further questions or debate. If the questioner is not present, the Chairman may ask the question on the questioner's behalf,

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indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

**10.8 Written Answers**

Any question that cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Member, to whom it was to be put, will be dealt with by a written answer, with a copy circulated to all Members.

**10.9 Reference of Question to the Cabinet or a Committee**

No discussion will take place on any question, but any Member may formally, without discussion, move that a matter raised by a question be referred to the Cabinet or the appropriate Committee. Once seconded, such a motion will be voted on without discussion.

**10.10 Withdrawal of Question**

A member of the public may withdraw their question by giving notice of their wish to do so to the Committee Services Manager prior to the commencement of the meeting at which their question is to be put.

**11. QUESTIONS BY MEMBERS**

**11.1 On Statements made by the Leader or a Member of the Cabinet to the Council, Reports or References from the Cabinet or Minutes of Committees**

A Member of the Council may ask the Leader or a Member of the Cabinet any question without notice about any statement made by the Leader or a Member of the Cabinet to the Council when that item is being received.

A Member of the Council may ask the Leader or a Member of the Cabinet or the Chairman of a Committee any question without notice upon a report or recommendation of the Cabinet or the minutes or reference from a Committee when that item is being received by the Council.

Supplementary Questions will not be permitted under this rule.

**11.2 Scope of Questions on Notice at Full Council and Time Allocated in the Meeting**

Subject to Rules 11.3, 11.4 and 11.5 a Member of the Council may ask:-

- the Chairman;
- a Member of the Cabinet; and
- the Chairman of any Committee;

a question on any matter, which is within their area of responsibilities as set out in Part 3 of the Constitution, in relation to which the Council has powers or duties or which affects the Tendring District.



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Only the text of the Questions will be included within the full Council Agenda and in the order in which the questions from Members were received. None of the accompanying preamble or explanatory statements (if any) submitted by the Questioner(s) will be so included.

The time allocated for receiving and disposing of questions shall be a maximum 30 minutes. Any question not disposed of at the end of this time shall be the subject of a written response, copied to all Members the following working day unless withdrawn by the questioner. The Question(s), together with the relevant written response(s), will also be published to the Council's website and will also be reported to the next meeting of the Council, as an "information only item", by the Committee Services Manager. The provisions of this paragraph will also apply in those instances when the full Council meeting has had to be cancelled.

Questions shall not be submitted to the Annual Meeting of the Council or to an Extraordinary Meeting of the Council or to the Budget and Council Tax setting meeting of the Council.

### **11.3 Notice of Questions**

A Member may only ask a question under Rule 11.2 if either:

- (a) notice has been given by delivering it in writing (or by personal e-mail) to the Committee Services Manager no later than midday 8 (eight) working days before the day of the meeting; or
- (b) the question relates to urgent matters, he has the consent of the person to whom the question is to be put and the content of the question is given to the Committee Services Manager by noon on the day of the meeting.

### **11.4 Number of Questions**

At any one meeting no Councillor may submit more than two questions.

### **11.5 Reasons for rejection of Questions**

- (a) the question is not about a matter for which the local authority has responsibility or which affects the District;
- (b) The Monitoring Officer will reject a question if in their judgement it could be considered to be defamatory or offensive or requires the disclosure of confidential or exempt information (as defined in the Access to Information Procedure Rules);
- (c) the Monitoring Officer will reject a question if in their judgment it is substantially the same as a question already received to be put to the ordinary meeting of the Council in question;
- (d) The Monitoring Officer will reject a question if in their judgement it is substantially the same as a question which has been put at a meeting of the Council in the past six months;

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- (e) The Monitoring Officer will reject a question if in their judgement it is likely to lead to a breach of the Members' Code of Conductor; or
  - (f) the question is about a matter that is subject to call in or ongoing legal proceedings.

#### **11.6 Response**

An answer may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where a reply cannot conveniently be given orally, a written answer given later to all Members.

The Member giving the response must provide an electronic or written copy of that response to the Committee Services Manager by Noon on the day of the meeting in order to enable the response to be circulated to the Questioner, the Chairman of the Council, the Leader of the Council and relevant Officers.

#### **11.7 Recording of Questions and Responses and Questions of Clarification**

After the response has been given to a Question on Notice, the Member who asked the question may ask one question, of which no notice is required. That question must solely relate to clarifying the response received. No statements or other form of question will be allowed. The ruling of the Chairman on the admissibility of the question is final.

The minutes of the meeting will record the text of the question plus any preamble or supporting statement (if any) together with the response given thereto and that, if appropriate, a question of clarification and a response was asked and given, without detailing the content.

#### **11.8 Time Limits for Asking/Answering Questions**

The time limit for asking each question (including any preamble or statements in support) is two minutes and the time limit for each reply is three minutes.

#### **11.9 Withdrawal of Question**

A Member may withdraw their question by giving notice of their wish to do so to the Committee Services Manager prior to the commencement of the meeting at which their question is to be put.

Once the meeting has commenced a Member may withdraw their question with the consent of the Chairman.

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**12. MOTIONS ON NOTICE****12.1 Scope of the Motion**

Any Motion to Council submitted in accordance with this Rule must be about a matter(s) for which the Council has a responsibility, or which affects the District of Tendring, or is about a matter(s) of regional, national or international importance which could be reasonably considered to affect residents of the District and upon which a Member wishes the Council to undertake an action or to make its views and opinions publicly known.

**12.2 Notice of the Motion**

No Member shall, under the provisions of this Rule, submit more than one motion for consideration at any ordinary meeting of the Council.

A maximum of two motions shall be accepted for inclusion in an agenda for an Ordinary Meeting of the Council under this Procedure Rule. Motions cannot be submitted to the annual meeting of the Council or to the Budget and Council Tax setting meeting of the Council.

Except for a motion which can be moved without notice under Rule 13 (Motions without Notice), written and signed notice (or notice by personal email) of the motion by the Member or members submitting it, must be delivered to the Committee Services Manager by no later than the initial deadline of midday ten working days before the date of the ordinary meeting of the Council. This initial deadline is to allow a period of time for Officers to consider the wording of the motion and to offer appropriate guidance, if necessary, and as detailed below. If submitted by email the motion should be sent to [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk).

The Monitoring Officer and/or the Committee Services Manager (or in their absence the Head of Democratic Services & Elections) are authorised and encouraged under this Rule to offer guidance and assistance to the Member(s) as to the wording of their Motion (in order to make it clear and obvious [as also referenced in Rule 12.7 below] what the Council's powers are should the Motion relate to an Executive function and/or to generally make the motion acceptable as a valid motion). The Member(s) submitting the Motion will be informed of the Officers' guidance as soon as possible and they will have until the final deadline of midday eight working days before the day of the ordinary meeting of the Council to notify the Officers whether they accept the Officers' advice.

The Monitoring Officer and/or the Committee Services Manager (or in their absence the Head of Democratic Services & Elections) will then formally decide whether to accept the motion as a valid motion having had regard to the provisions of Rule 14 (Motions not Permitted).

**12.3 Motion set out in Agenda**

Valid motions for which notice has been given will be listed on the agenda in the order in which notice was received, unless the Member(s) in giving that notice states, in writing, that they wish it to be included on the Agenda of a future ordinary meeting of the Council.

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**12.4 Withdrawal of the Motion**

Prior to the publication of the Agenda for the ordinary meeting of the Council in question (which will be at least five clear, working days before the meeting) the Member or Members may withdraw their Motion by notifying the Committee Services Manager of their wish to do so. This notification must be submitted to the Committee Services Manager by a written and signed notice (or notice by e-mail to democraticservices@tendringdc.gov.uk ).

Once the Agenda for the ordinary meeting of the Council in question has been published the Motion can only be withdrawn at the Council meeting itself in accordance with the provisions of Council Procedure Rule 16.7 (Withdrawal of Motion).

**12.5 Professional Advice of the Council's Statutory Officers on the Motion**

Once the Motion has been accepted as being valid by the Monitoring Officer and/or the Committee Services Manager a formal Advisory Note detailing any necessary initial professional advice in relation to the implications for the Council of that Motion will be prepared by the Council's Statutory Officers, with the Monitoring Officer acting as the lead officer in the compilation of that Advisory Note.

In that regard:-

- (i) the Head of Paid Service (i.e. the Chief Executive) will give any necessary professional advice on implications for the Council in respect of his responsibilities in relation to staffing matters;
- (ii) the Monitoring Officer will give any necessary professional advice on implications for the Council in respect of budgetary, constitutional or legislative requirements; and
- (iii) the Section 151 Officer will give any necessary professional advice on implications for the Council relating to budgetary, constitutional or legislative requirements.

That Advisory Note will be circulated, if possible, to all Members of the Council as part of the Council Agenda Document Pack. If this is not possible, then the Advisory Note will be circulated to Members as soon as possible thereafter but in any case no later than Noon on the working day before the date of the Council meeting.

The Advisory Note will also be published on the Council's website (unless of course the Exempt Information provisions apply).

At the meeting itself, Council must have regard to the contents of the Advisory Note in making its decision on the Motion, as set out in Section 3.7 of the Members' Code of Conduct.

**12.6 Consideration of the Motion at an Ordinary Meeting of the Council**

At the meeting itself the Chairman will invite the Member who submitted the motion to formally move it and then to proceed to read out the text of the Motion (for the benefit of the public who are either watching proceedings from the public gallery or via the livestream). The Member who moved the motion will not be required to explain its purpose at this stage of the proceedings.

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The Chairman will then ask for a seconder for the motion. If there is no seconder then the motion will be declared by the Chairman as having failed and the Chairman will immediately move onto the next business on the agenda.

In the event that the Motion is not moved at this time by the Member who gave notice thereof, due to their absence, it will be treated as withdrawn and cannot be moved without a fresh notice given under this Rule, unless the Chairman is aware of mitigating circumstances for that Member's absence and Council, having been made aware of such circumstances, decides, with the consent of the simple majority of Members present (which will have been demonstrated, without any debate, by a show of hands) to defer the Motion to the next ordinary meeting of the Council. If the Member who gave notice of the Motion considers it a matter of urgency they can nominate another Member to move the Motion at the Council Meeting by notifying the Committee Services Manager of that arrangement by no later than Noon on the day of the meeting. That nominated Member will, from that point, take "ownership" of the Motion as far as these Council Procedure Rules are concerned.

At this point in the proceedings, and in the circumstances in which one or more of the Council's Statutory Officers has stated in their Advisory Note that the Motion should not be dealt with at the meeting, the Chairman can declare that, on the advice of the statutory officers, the Motion is either deferred until the next ordinary meeting of the Council or is referred to the relevant body or bodies, as appropriate. The Motion will thereupon stand so deferred/referred without discussion or debate. Council Procedure Rules 12.8, 12.9 and 12.10 will apply, as appropriate in the circumstances.

Otherwise, if the motion is seconded then it will be proceed to be debated in accordance with the maximum 60 minute time limit normally allocated for a Motion submitted under this Rule. This 60 minute period will commence at the point the Chairman calls on the Mover of the Motion to speak to the motion and explain its purpose and this 60 minute period will also cover any amendments to the Motion that are accepted and debated upon by Members.

In debating the Motion the provisions, as applicable, of Council Procedure Rules 16, 19, 23, 24, 25, 28 and 29 will apply, together with the principles of decision making as set out in Article 13.02 of the Council's Constitution.

#### **12.7 Powers available in respect of the Council making a decision on the Motion at an Ordinary Meeting of the Council**

1. If the Motion relates to a matter under the purview of the Executive, as detailed within The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, then the Council legally can only make a recommendation to the Executive, or give its advice/opinion to the Executive, in relation to the Motion.
2. If the Motion relates to a non-executive function that is delegated to a Committee then the Council can either make a definite conclusive and binding decision, or make a recommendation to the Committee or give its advice/opinion to the Committee, in relation to the Motion.
3. The Council, through its debate, can also through the amendment provisions set out in Rule 16.5 (Amendments to Motions) delay making a decision on the Motion until a

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future ordinary meeting of the Council if it so wishes, as long as it makes clear its reason for doing so. Reasons for such a delay could potentially but not exclusively include:-

- (a) a requirement for further information on the implications of the potential decision to be researched and submitted;
- (b) the lateness of the hour;
- (c) the need to hold a site visit;
- (d) a requirement for the attendance of an Officer and/or representative of an external organisation et cetera;
- (e) to enable a consultation exercise to be carried out either internally within the Council or externally;
- (f) to enable Political Group Leaders to informally discuss the matter;
- (g) to enable a public meeting or inquiry to be held; and
- (h) to enable the calling of a referendum (subject to the necessary financial provision being approved).

#### **12.8 Referred Motions – Consideration of the Motion by the Cabinet or a Committee**

If the Motion is, in accordance with the provisions of Rule 12.7(3) above, formally referred to the Cabinet or a Committee for consultation, the Head of Democratic Services & Elections will ensure that the Motion is included on the agenda of the earliest practical meeting of the Cabinet/Committee. That body shall be required solely to consider such motion and to advise the Council (by no later than the second Ordinary Meeting of the Council held following the date of Council's referral) of their opinion as to whether such motion should be supported or not supported. That body will not be required to propose an alternative motion or an amended motion.

Prior to making its response the Cabinet/Committee may, following consultation with the relevant Officers, require further information to be presented to it for consideration on the implications of the proposed motion. Such a report must be considered by that body in a timely manner.

Once the Cabinet/Committee has considered the Motion it will be sent back to Council with that body's response.

#### **12.9 Deferred Motions – Rights of Member submitting/Mover of the Motion**

If the Motion has, in accordance with the provisions of Rule 12.6 above, been formally deferred until the next ordinary meeting of the Council (i.e. due to the "mitigating circumstances" provision or by the Chairman acting on the advice of the statutory officers) the Member who submitted the Motion will be made aware of this, as soon as possible, by the Committee Services Manager and also of the date of the next ordinary Council meeting.

The right of the Member submitting/mover of the Motion to speak to the motion and explain its purpose will be automatically reserved until that meeting.

#### **12.10 Referred Motions – Rights of Mover of the Motion**

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If the Motion has, in accordance with the provisions of Rule 12.6 above, been formally referred to a relevant body or bodies (i.e. due to the Chairman acting on the advice of the statutory officers) the Mover of the Motion (or another Member nominated by them) will be, as a matter of courtesy, made aware by the Committee Services Manager of the date(s) of the meeting(s) of such body or bodies at which their Motion will be considered. The Mover of the Motion (or other Member nominated by them) will have the right to attend such meeting(s) to speak to the motion and explain its purpose. That Member will also be permitted to answer questions and/or provide clarification, if requested to do so by the Chairman of the meeting. The Member will also have a right of reply (of no more than three minutes duration) to respond to the debate at the meeting on their motion.

If the Motion has, in accordance with the provisions of Rule 12.7(3) above (i.e. following a debate at Council) been formally referred to the Cabinet or a Committee for consultation, the Mover of the Motion (or another Member nominated by them) will be, as a matter of courtesy, made aware by the Committee Services Manager of the date of the Cabinet/Committee meeting at which their Motion will be considered so that they can attend if they so wish.

As the purpose of the motion will have already been explained at the full Council meeting the Mover of the Motion (or another Member nominated by them) will not have any automatic right to speak at that meeting though they will be permitted to answer questions and/or provide clarification, if requested to do so by the Chairman of the meeting. The Member will also have a right of reply (of no more than three minutes duration) to respond to the debate at the meeting on their motion.

**12.11 Notification of the decision of the Council to the relevant Body**

Once the Council has made its final decision on the Motion and if it is relevant and necessary to do so, the Head of Democratic Services & Elections will, at the earliest practical meeting of the Cabinet/Committee, as appropriate, formally report that decision of the Council in order that that body can note the Council's decision and consider what action, if any, that it now needs to take.

**12.12 Consideration of a Motion at an Extraordinary Meeting of the Council**

At an Extraordinary Meeting of the Council any Motion listed on the Agenda will be dealt with at that meeting in accordance with the provisions, as applicable, of this Rule 12 and Rules 16, 19, 23, 24, 25, 28 and 29 together with the principles of decision making as set out in Article 13.02 of the Council's Constitution.

**13. MOTIONS WITHOUT NOTICE**

The following motions may be moved without notice:

- (a) To appoint a Chairman of the meeting at which the motion is moved;
- (b) In relation to the accuracy of the minutes;
- (c) To change the order of business in the agenda;

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- (d) To refer something to, or back to, Cabinet or relevant Committee;
  - (e) To receive reports or adoption of recommendations of Committees or Officers and any resolutions following from them;
  - (f) To withdraw a motion;
  - (g) To amend a motion;
  - (h) To proceed to the next business;
  - (i) That the question be now put;
  - (j) To adjourn a debate;
  - (k) To adjourn a meeting;
  - (l) To exclude the public and press in accordance with the Access to Information Procedure Rules;
  - (m) That a Member named under Rule 23.3 Disorderly Conduct not to be heard further or to exclude them from the meeting under Rule 23.4;
  - (n) To give the consent of the Council where its consent is required by this Constitution;
  - (o) To extend the time limit for a speech; and
  - (p) In the case of urgency, notice of motion may be given, in writing, signed by the Member, or Members, giving the notice and the reason for its urgency and delivered by noon on the morning of the day of the meeting at the office of the Chief Executive who will immediately advise the Chairman of its receipt. If in the opinion of the Chairman, the matter is not urgent, the Chairman may direct that it be disallowed.

**14. MOTIONS NOT PERMITTED**

No motion shall be submitted on a matter that relates to an item which;

- (a) is not about a matter for which the local authority has a responsibility or which affects the District or is about a matter of regional, national or international importance that could not be reasonably considered to affect the residents of the District;
- (b) is to be considered on the same Council agenda;
- (c) is substantially the same as a motion already received to be put to the ordinary meeting of the Council in question;
- (d) is substantially the same as a motion which has been put at a meeting of the Council in the past six months;



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- (e) has been the subject of a Key Decision in the previous six months;
  - (f) is included within the work programme of an Overview and Scrutiny Committee;
  - (g) is, at the time of submission, subject to call-in or on-going legal proceedings or requires the disclosure of confidential or exempt information (as defined in the Access to Information Procedure Rules);
  - (h) the Monitoring Officer will reject a motion if in their judgment it is likely to lead to a breach of the Members' Code of Conduct.

**15. QUESTIONS AFFECTING PERSONS EMPLOYED BY THE COUNCIL**

If any question arises at a meeting of the Council or of a Committee or Sub-Committee as to the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by the Council, such question shall not be the subject of discussion until the Council, Committee or Sub-Committee has decided whether or not the power of exclusion of the public shall be exercised.

**16. RULES OF DEBATE**

**16.1 No Speeches until Motion Seconded**

No speeches may be made after a motion has been proposed and explained until it has been seconded. However, a motion that the recommendations from Cabinet or references from the relevant Committee shall be adopted need not be seconded.

A Member when seconding a motion or amendment may, if he then declares his intention to do so, reserve his speech until a later period of debate, subject to Rule 16.10 – Closure Motions.

**16.2 Right to Require Motion or Amendment in Writing**

Unless notice of the motion or amendment has already been given, the Chairman may require it to be written down and handed to him before it is discussed.

**16.3 Content and Length of Speeches**

Speeches must be directed to the motion under discussion or to a personal explanation or point of procedure. No speech (including those to move motions) shall exceed three minutes except with the consent of the Council. This does not apply to the statement by the Leader on the State of the District and the Leader's presentation of the budget.

**16.4 When a Member May Speak Again**

A Member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

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- (a) to speak once on an amendment moved by another Member;
  - (b) to move or second a further amendment if the motion has been amended since he last spoke;
  - (c) if his first speech was on an amendment moved by another Member, to speak on the main issue (provided the amendment has not been carried);
  - (d) in exercise of a right of reply;
  - (e) on a point of procedure; and/or
  - (f) by way of personal explanation.

### 16.5 Amendments to Motions

- (a) An amendment to a motion must be relevant to the motion and either be:
  - (i) to refer the matter to the Cabinet or relevant Committee for consultation, further information on the implications of the potential decision to be researched and submitted, consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words

as long as the effect of (ii), (iii) or (iv) is not to negate the motion or introduce a new subject matter into the motion before the Council. In addition, any amendment proposed to be made that may have budgetary implications must have been submitted to the Council's Section 151 Officer at least two working days before the Full Council meeting to enable them to consider the implications for the Council's Finances.

Furthermore, no amendment will be accepted that could bind or fetter the Executive or a Committee in relation to matters that are within the responsibility of the Executive or a Committee of the Council.

- (b) Any amendment proposed to be made to the Cabinet's budget proposals must have been submitted to the Council's Section 151 Officer at least two working days before the Budget Full Council meeting(s) to enable them to consider the implications for the budget.
- (c) Any Member wishing to move an amendment or alternative recommendation to those made by the Independent Remuneration Panel in respect of the Members' Scheme of Allowances must have submitted their proposals to the Council's Section 151 Officer and the Monitoring Officer at least two working days before the relevant Full Council meeting to enable them to consider the legal and financial implications. Any such

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amendment or alternative recommendation must be accompanied by the reasons for departing from the IRP's recommendations. Once deemed to be valid by the Monitoring Officer it will be immediately circulated by email to all Members of the Council. Copies of such amendment or alternative recommendation(s) will also be placed on Members' tables prior to the commencement of the Council meeting.

- (d) Only one amendment may be moved and discussed at any one time. Subject to Rule 16.10 no further amendment may be moved until the amendment under discussion has been disposed of. However the Chairman may permit a Member to give formal notice of the terms of any further amendment which he proposes to move at a later stage in the proceedings.
- (e) A member may withdraw their proposed amendment with the consent of the seconder.
- (f) If an amendment is not carried, other amendments to the original motion may be moved.
- (g) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (h) After an amendment has been carried, the Chairman will read out the substantive motion before accepting any further amendments, or if there are none, put it to the vote.

#### **16.6 Alteration of Motion**

- (a) A Member may alter a motion of which he has given notice with the consent of the seconder.
- (b) A Member may alter a motion that he has moved without notice with the consent of the seconder.
- (c) Only alterations that could be made as an amendment may be made.

#### **16.7 Withdrawal of Motion**

A Member may withdraw a motion that he has moved with the consent of the seconder unless it is the subject of an amendment. No Member may speak on the motion after the mover has withdrawn it.

**16.8 Right of Reply**

- (a) The seconder of a motion (including the seconder of a motion on which an amendment has been moved), the mover of a motion (including the mover of a motion on which an amendment has been moved) and the seconder and the mover of an amendment have a right of reply at the end of the debate on the motion or amendment. Following this, the appropriate Portfolio Holder or the Chairman of the relevant Committee shall have the right to speak on the motion or amendment immediately before it is put to the vote. Where the mover of the motion or amendment was the Leader of the Council, he shall have the final right to speak.
- (b) A Member exercising a right of reply shall confine his remarks to answering the arguments employed or observations made during the debate and shall not introduce any new matter.
- (c) The right of reply of the seconder of a motion or amendment (as referenced in (a) above) will only apply if the seconder has not already spoken during the debate on the motion or amendment in question.

**16.9 Motions Which May be Moved During Debate**

When a motion is under debate, no other motion may be moved except the following procedural motion:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) to extend the time for speeches;
- (h) to give any consent required by these procedure rules;
- (i) to suspend one or more of the procedure rules;
- (j) to exclude the public and press in accordance with the Access to Information Procedure Rules; and

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- (k) that a Member named under Rule 23.3 below (Disorderly Conduct), not to be heard further or to exclude them from the meeting under Rule 23.4.

**16.10 Closure Motion**

- (a) A Member may move, without comment, the following motions at the conclusion of a speech of another Member;
- (i) That the Council proceed to the next business;
  - (ii) That the question now be put;
  - (iii) That the debate now be adjourned; or
  - (iv) That the Council does now adjourn; or
  - (v) That the matter be referred to the Cabinet or a Committee(s) in accordance with the responsibility of functions and the defined terms of reference.
- (b) On the seconding of which the Chairman shall, unless in their opinion the matter before the meeting has been insufficiently discussed, proceed as follows:
- (i) On a motion to proceed to the next business or to refer the matter to the Cabinet or a Committee(s): they shall first give the seconder and the mover of the original motion their right of reply, under Rule 16.8 above, and then put to the vote the motion to proceed to the next business or to refer the matter;
  - (ii) On a motion that the question now be put: they shall put to the vote the motion that the question now be put, and if it is passed then the Chairman will give the seconder and the mover of the original motion their right of reply under Rule 16.8 above before putting their motion to the vote;
  - (iii) On a motion to adjourn the debate or the meeting: they shall put the adjournment motion to the vote without giving the seconder and the mover of the original motion their right of reply on that occasion.

**16.11 Point of Procedure**

A Member may raise a point of procedure at any time. The Chairman will hear him immediately. A point of procedure may only relate to an alleged breach of these Council Procedure Rules or the law. The Member must indicate the rule or law and the way in which he considers it has been broken. The ruling of the Chairman on the matter will be final.

**16.12 Personal Explanation**

A Member has the right to make a personal explanation when directly related to some material part of an earlier speech by the Member if it appears to have been misunderstood in the present debate. The ruling of the Chairman on the admissibility of a personal explanation will be final.

**17. STATE OF TENDRING STATEMENT**

At the last ordinary meeting before the Annual Council meeting each year, the Leader will make a Statement on the State of the Tendring District. The Chairman may permit debate following the statement.

In addition, the text of the Leader of the Council's Statement on the State of the Tendring District must be emailed to the Committee Services Manager by no later than 5.00 p.m. on the day of the relevant Full Council meeting in order that copies of same can be printed and placed on Members' seats prior to the commencement of the Council meeting. The Committee Services Manager will also email the statement to all Members of the Council as soon as possible after they receive it from the Leader of the Council.

**18. PREVIOUS DECISIONS AND MOTIONS****18.1 Motion to Rescind a Previous Decision**

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least 12 Members.

**18.2 Motion Similar to One Previously Rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 12 Members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

This procedure rule does not apply to motions moved to adopt a recommendation to the Council from the Cabinet or a Committee.

**19. VOTING****19.1 Voting**

A Member cannot vote on a matter if they have not been present for the whole of the consideration of that matter.

**19.2 Majority**

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members present in the room, eligible to vote and voting at the time the question was put to the vote.

**19.3 Chairman's Casting Vote**

If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how or whether the Chairman chooses to exercise

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a casting vote. In the case of an equality of votes for the election of the Chairman of the Council, the retiring Chairman or the person presiding at the meeting must exercise a casting vote.

**19.4 Show of Hands**

Unless a recorded vote is demanded under Rule 19.5, the Chairman will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

**19.5 Recorded Vote**

If 9 Members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

A recorded vote is mandatory on any decision relating to the budget or Council Tax. This includes not only the substantive budget motions agreeing the budget and setting Council taxes, but also on any amendments proposed at the meeting.

**19.6 Right to Require Individual Vote to be Recorded**

Where any Member requests it immediately after the vote is taken, his vote will be so recorded in the minutes to show whether he voted for, or against, the motion, or abstained from voting.

**19.7 Voting on Appointments**

Where there is more than one person nominated and seconded for any position to be filled by the Council then unless the Council decides otherwise at the time, the person receiving most votes shall be appointed. Where there is only one person nominated and seconded, Members will cast their votes either for or against that person. The person nominated will be appointed if the votes for are more than the votes against.

**20. MINUTES**

**20.1 Signing the Minutes**

The Chairman will sign the minutes of the proceedings at the next suitable ordinary meeting. The Chairman will move that the minutes of any previous meeting be signed as a correct record. The only issue in relation to the minutes that can be discussed is their accuracy.

**20.2 Form of Minutes**

Minutes of any Council, Committee or Sub-Committee meeting shall comprise a brief summary of the proceedings of, and business transacted at, the meeting. Minutes will not record details of the debate or the views or comments of individual Members. The exceptions to this are committees and sub-committees when considering applications, hearings and appeals or receiving evidence. The Minutes of such meetings will give summarised details of the issues covered in the debate.

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No Minutes of any meeting will be produced as a verbatim recording of those proceedings.

Minutes will contain all motions and amendments in the exact form and order the Chairman accepted them as being proper motions/amendments and put them to the vote.

Minutes will also record those instances when a Member has submitted their apologies for absence. If so requested by the Member concerned the Minutes will also record the reason for their absence.

**21. RECORD OF ATTENDANCE**

All Members present during the whole, or part, of any meeting must sign their names on the attendance sheets before the end of that meeting to assist with the record of attendance.

**22. EXCLUSION OF PUBLIC**

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Part 4 of this Constitution or Rule 24 (Disturbance by Public).

**23. MEMBERS' CONDUCT**

**23.1 Standing to Speak**

When a Member speaks at full Council he must stand (if possible) and address the meeting through the Chairman. If more than one Member stand, the Chairman will ask one to speak and the others must sit. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of procedure or a point of personal explanation.

**23.2 Chairman Standing**

When the Chairman stands during a debate, any Member speaking at that time must stop and sit down. The meeting must be silent.

**23.3 Member Not to be Heard Further**

If a Member persistently disregards the ruling of the Chairman by behaving improperly, or offensively, or deliberately obstructs business, the Chairman or any other Member may move that the Member not be heard further. If seconded, the motion will be voted on without discussion.

**23.4 Member to Leave the Meeting**

If the Member continues to behave improperly after a motion in Rule 23.3 is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

**23.5 General Disturbance**



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If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he thinks necessary.

**24. DISTURBANCE BY PUBLIC**

**24.1 Removal of a Member of the Public**

If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If he continues to interrupt, the Chairman will order his removal from the meeting room.

**24.2 Clearance of Part of Meeting Room**

If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

**25. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES**

**25.1 Suspension**

All of these Council Procedure Rules except Rules 19.6 and 20.1 may be suspended by motion on notice, or without notice, if at least 36 Members of the Council are present and 25 Members vote in favour of suspension. Suspension can only be for the duration of the meeting.

**25.2 Amendment**

Any motion by a Member to add to, vary or revoke these Council Procedure Rules will, when proposed and seconded, will stand adjourned without discussion to the next ordinary meeting of the Council.

**26. RESIGNATION OF CHAIRMANSHIP ETC**

The Chairman or Vice-Chairman of the Council may at any time, by notice in writing delivered to the Chief Executive, resign their position and such resignation shall take immediate effect on delivery of the notice.

**27. CASUAL VACANCIES ETC**

On a casual vacancy occurring in the office of Chairman or Vice-Chairman of the Council an election to fill the vacancy shall be held not later than the next ordinary meeting of the Council after the date on which the vacancy occurs, or if that meeting is held within fourteen days after that date, then not later than the next ordinary meeting of the Council, and shall be conducted in the same manner as an ordinary election.

**28. STATUTORY OFFICERS' ADVICE**

The Chief Executive, Monitoring Officer and Section 151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety,

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probity and budget and policy framework issues to the Chairman and, if requested, to all Councillors present.

**29. INTERPRETATION OF PROCEDURE RULES**

At any meeting the ruling of the Chairman as to the construction or application of any of the Council Procedure Rules, or as to any proceedings of the Council, shall not be challenged.

Any advice provided by the Statutory Officers in assisting the Chair for the application of the Rules can be shared with all Councillors.

**30. PETITIONS**

Petitions will be dealt with in accordance with the scheme approved by Council, contained within Part 5 of the Constitution.

The rules of debate will be in accordance with the Council Procedure Rules.

The length of speeches by presenters of petitions shall not exceed three minutes.

**31. MINOR AMENDMENTS OF GUIDANCE**

Any minor amendment of these rules as a consequence of any written advice or guidance to Officers and Members is delegated to the Monitoring Officer.

**32. APPLICATION TO COMMITTEES AND SUB-COMMITTEES**

All of the Council Procedure Rules apply to meetings of the Council.

None of these rules apply to meetings of the Cabinet.

Rules 6-9, 11.3-11.5, 11.7 – 11.9, 15, 16 (excluding 16.4), 19 (excluding 19.5 and 19.7), 20 – 24 (excluding 23.1), 26, 28, 29 and 31 including those in Part 2 below apply with any necessary modification to meetings of Committees and Sub-Committees. Rule 40 applies only to the Planning Policy & Local Plan Committee and the Planning Committee.

**COUNCIL PROCEDURE RULES****SECTION 2 – COMMITTEE MEETINGS****33. APPOINTMENT OF MEMBERS OF COMMITTEES AND SUB-COMMITTEES/VACANCIES IN CHAIRMANSHIP****33.1 General**

Subject to the rules of political proportionality, as provided in the Local Government and Housing Act 1985 (Section 15) and the Local Government (Committees and Political Groups) Regulations 1990, and Rule 33.2 below, Full Council (usually at its Annual Meeting) will appoint Committees and Sub-Committees in accordance with the Local Government Act 1972 (Section 102).

**33.2 Eligibility**

Subject to the provisions of Rule 33.3 below the eligibility requirements with regard to membership of Committees and Sub-Committees are as follows:-

**Overview and Scrutiny Committees**

All Councillors except Cabinet members may be members of the Overview and Scrutiny Committees.

**Audit Committee, Human Resources and Council Tax Committee, Licensing and Registration Committee, Planning Policy & Local Plan Committee, Planning Committee and Miscellaneous Licensing Sub-Committee**

All Councillors may be members of these Committees.

The members of the Miscellaneous Licensing Sub-Committee must also be members of the parent Licensing and Registration Committee.

CIPFA Guidance recommends that the membership of the Audit Committee should not cross-over with either the Executive or Scrutiny functions. However, Officers' advice is that if Members feel that cross membership is necessary then this should be limited to one member from each of the Executive or Scrutiny functions. The Chairman of the Audit Committee should not be a member of the Cabinet.

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#### Standards Committee

All Councillors may be members of this Committee except that no more than one member of the Committee shall be a member of the Cabinet (and that member cannot be the Leader of the Council). In addition, no Leaders of Political Groups can be members of that Committee.

#### Premises/Personal Licences Sub-Committee

The membership of this Sub-Committee is appointed on an ad hoc basis from the membership of the Licensing and Registration Committee.

### **33.3 Training Members of the Audit, Licensing and Registration, Planning and Standards Committees**

In addition to specific training required as and when necessary, training shall be provided to all Members appointed to the Audit, Licensing and Registration, Planning and Standards Committees on an annual basis at an appropriate date and time after each annual meeting of the Council and such training shall be mandatory. The Monitoring Officer shall define what is meant by the word “mandatory” and they will also decide whether the training offered/provided is/was sufficient and “fit for purpose”.

A Member cannot sit as a member of the Planning Committee unless they have received specific training with regard to the determination of planning applications.

A Member cannot sit as a member of the Licensing and Registration Committee unless they have received specific training with regard to the determination of applications for personal or premises licences submitted under the Licensing Act 2003.

A Member cannot sit as a member of the Audit Committee unless they have received specific training with regard to the determination of the Council's Statement of Accounts and comprehension of Auditor reports.

A Member cannot sit as a member of the Standards Committee unless they have received specific training with regard to the Hearings Procedure and participation in Hearings.

No Member can continue to sit as a member of the above committees if they have gone more than two years without attending any of the relevant training events.

### **33.4 Resignation of Chairmanship Etc.**

Any Chairman, Vice-Chairman or Member of a Committee, Sub-Committee or Working Party may at any time, by notice in writing or personal email delivered to the Chief Executive, resign his position and such resignation shall take immediate effect on delivery of the notice.

### **33.5 Casual Vacancies**

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In the case of a casual vacancy in the office of a Chairmanship or Vice-Chairmanship of a Committee, Sub-Committee or Working Party an item shall be placed on the agenda of the next meeting of the relevant body which shall, before proceeding to any other business, elect from its Members a Chairman or Vice-Chairman as the case may be for the remainder of the year.

**34. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES, SUB-COMMITTEES AND WORKING PARTIES**

**34.1 General**

Substitute members may attend, speak and vote at meetings of Committees and Sub-Committees of the Council, subject to Rules 33.3 and 33.4. In the case of the Overview and Scrutiny Committees, such Substitute Members may not be Members of the Cabinet. Substitute Members may not be appointed to any Working Parties unless that working party has been established in full accordance with the Widdicombe Rules.

**34.2 Eligibility and Effect**

A Substitute shall belong to the same political group (as defined in the Local Government and Housing Act 1989) as the Member for whom he is a Substitute. Substitution by, or of, Members not in a political group is not permitted.

Only the Member being substituted or their Group Leader (or Deputy) can appoint substitute members. Notification of a substitute from the Member being substituted or their Group Leader (or Deputy) must be given to Committee Services prior to the commencement of the meeting at which the substitution is to apply. Where more than one notification is received, the Group Leader (or Deputy's) request will take precedence.

The substitution will be in effect for the whole of the meeting (including any part thereof that is adjourned to, and subsequently considered at, a later date). The Substituted Member must not take their seat.

**34.3 Training Substitute Members of the Audit, Licensing & Registration, Planning and Standards Committees**

In addition to specific training required as and when necessary, training shall be provided to all named Substitute Members appointed to the Audit, Licensing and Registration, Planning and Standards Committees on an annual basis at an appropriate date and time after each annual meeting of the Council.

**34.4 Substitute Members of the Audit, Licensing & Registration, Planning and Standards Committees**

Group Leaders shall, provide named Substitute Members (in accordance with proportionality rules) and all substitutions will only be permitted from this list. Any member of a political group shall be eligible to act as a named Substitute Member providing that they have received

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training in relation to all relevant Audit, Licensing & Registration, Standards-related or Planning matters under a continuing programme arranged by the Council. When naming a designated substitute, Group Leaders shall, as far as reasonably practicable, satisfy themselves that the named Member is as conversant with all relevant Audit, Licensing and Registration, Standards-related and Planning matters as the appointed members of those Committees.

**34.5 Substitute Members of the Premises/Personal Licences Sub-Committees**

Substitutes for Members of the Premises/Personal Licences Sub-Committee shall be made from the appointed membership of the Licensing & Registration Committee. Such substitute need not be a Member of the same political group and the provisions of Rule 34.2 shall not apply.

The Committee Services Manager will, at the request of the Group Leader of a member of the Premises/Personal Licences Sub-Committee or at the request of the Member concerned, appoint a Substitute from amongst the appointed Membership of the Licensing & Registration Committee who should have received training in relation to licensing under a continuing programme arranged by the Council. Such request need not be in writing.

The Committee Services Manager will ensure that a fourth or standby Member, drawn from amongst the appointed membership of the Licensing & Registration Committee, is present at every meeting of the Premises/Personal Licence Sub-Committee. Such Member shall act as a member of the Sub-Committee in the event that one of the three Sub-Committee members becomes unable to act due to e.g. illness, conflict of interest.

**35. MEETINGS OF COMMITTEES**

**35.1 Ordinary Meetings**

The Committees of the Council will normally hold meetings (known as Ordinary Meetings for the purposes of these Procedure Rules) on dates and at times as the Council decides at its Annual Meeting.

The business of ordinary meetings of a Committee etcetera shall cease after a duration of three hours on the day on which the meeting commenced, or such earlier, or later, time as the Chairman shall consider appropriate. In the event that the Chairman wishes to extend the meeting beyond three hours they will be expected to give an indication of the length of that extension and secure the consent of the Committee etc. in doing so.

For the avoidance of any doubt the above requirement does not extend to a meeting of any committee or sub-committee which is conducting a Hearing into licensing or standards/conduct or other regulatory matters. On such occasions the Chairman will be expected to call regular adjournments of the Hearing in order for participants to have comfort and/or refreshment breaks.

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**35.2 Special Meetings**

1. The Chairman of a Committee can call a Special Meeting of a Committee at any time.
2. A Special Meeting shall also be called on the requisition of a not less than a quarter of the whole number of Members of the Committee, delivered in writing, or by email to the Chief Executive but in no case shall less than three Members requisition a Special Meeting.

No business except that set out in the Summons and Agenda shall be carried out at a Special Meeting of a Committee.

**35.3 Recording and Streaming of Committee Meetings**

In accordance with the approved Protocol for such matters, the Council will make an audio and/or visual live stream and recordings of its Committees, which will be made available on the Council's website for a period of at least one year from the date of the relevant meeting.

**36. ATTENDANCE AT MEETINGS**

Except as otherwise provided in this Constitution and in particular having regard to the provisions of the Access to Information Procedure Rules:-

- 36.1** Every Member of the Council shall be entitled to attend all meetings of Committees and Sub-Committees. This does not include attendance at Portfolio Holder Working Parties. A Member of the Council shall not take part in any discussion at a meeting of a Committee or Sub-Committee of which he is not a Member, unless specifically invited to do so by the Chairman of that meeting, or unless he is attending the meeting of the Committee under the provisions of Rule 12.6, and he shall in no case be entitled to vote. The Member shall obtain the permission of the appropriate Chairman prior to the relevant meeting if he wishes to speak at that meeting. Exceptions to this include that the Portfolio Holder with the responsibility for Planning and the Chairman of the Planning Committee each have a standing invitation to attend meetings of the Planning Policy & Local Plan Committee. The Portfolio Holder with the responsibility for Planning will be permitted to express the views of the Executive on strategic planning issues and the Chairman of the Planning Committee will be permitted to express the Planning Committee's views and comments on the Report items that are being considered by the Planning Policy & Local Plan Committee.

Additionally, where a Member has submitted a Motion to Council under Rule 12.2 and that Motion has been referred to a Committee under Rule 12.6 or Rule 12.7 that Member will have the right to attend the relevant meeting of that Committee and present their Motion, as appropriately permitted under Rule 12.10.

Where the public speaking scheme (Rule 40) applies to a particular application or matter before the Planning Committee, no Member shall be entitled to address or speak to the

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Planning Committee under this Rule. This does not detract from any rights the Member has under the public speaking scheme.

At such times as the Standards Committee (in respect of Hearings on standards/conduct related matters) or the Premises/Personal Licences Sub-Committee (in respect of Hearings on licensing related matters) exclude the press and public and retire to deliberate and reach their decision “in camera”, only the duly appointed members of the decision making body will be allowed to remain in the meeting. All other Councillors will be treated as members of the public and will be excluded from the meeting at that time.

- 36.2** The Chief Executive, Chief Financial Officer and Monitoring Officer have the right to attend, speak on an item of business, provide representations and present a report to discharge their statutory and constitutional duties whenever necessary. In such instances, the Committee or Sub-Committee in question will give due regard of the relevant advice provided. The decision and minutes of the meeting will record the advice, how it was taken into account and reasons for any departure.

**37. SUB-COMMITTEES AND WORKING PARTIES**

The Council will decide the establishment, terms of reference, delegated powers, number of Members and the allocation of seats to political groups for all new Sub-Committees.

The Council, (normally at its Annual Meeting) will also appoint individual Members to standing Sub-Committees and will appoint the Chairman and Vice-Chairman of those Sub-Committees.

Every non-overview and scrutiny Committee of the Council may appoint working parties for specified purposes in accordance with Part 3 of this Constitution. The Committee may amend the constitution of the working parties or dissolve them at any time.

The Chairman and Vice-Chairman of any working parties appointed by a Committee will be determined at the first meeting of the working party. Meetings of working parties will normally be convened, either at an earlier meeting of the working party or by the Committee Services Manager in consultation with their Chairman.

**38. QUESTIONS ON NOTICE AT COMMITTEES AND SUB-COMMITTEES**

Subject to Rules 11.4 and 11.5 and upon providing two working days' notice, a Member of a Committee may, at a meeting thereof, ask the Chairman of it a question on any matter in relation to which the Council has powers or duties of which affect the Tendring District and which falls within the terms of reference of that Committee.

**39. SITE VISITS, SPECIFIC BRIEFING OR TRAINING**

- 39.1** Where a site visit, specific briefing or training is called by Officers in relation to a planning or licensing application received by the Council, any Member or Substitute Member of that Committee who does not attend the site visit, specific training or briefing, shall not be eligible



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to take part at the meeting at which the application to which the site visit, specific training or briefing related is to be considered.

- 39.2** Notification of site visits arranged by any Committee or Sub-Committee shall be given to the Members for the ward in which the site is situated. Such Members shall have the right to attend the site visit but shall not take part in any discussion unless specifically invited to do so by the Chairman of the body that has arranged the site visit. The body arranging the site visit shall not exercise any delegated powers nor take any decisions in the course of the visit.

**40. SCHEMES TO PERMIT MEMBERS OF THE PUBLIC TO SPEAK AT MEETINGS OF THE PLANNING POLICY & LOCAL PLAN AND PLANNING COMMITTEES**

The Planning Policy & Local Plan Committee and the Planning Committee will each have a scheme providing a limited right for speaking by members of the public in relation to applications or other matters of business. The schemes shall be in such a form as the Full Council determines having considered a recommendation from the relevant Committee.

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**ACCESS TO INFORMATION PROCEDURE RULES**

The Council considers that Local Government derives an important part of its authority and influence from the trust and confidence of the individuals and communities it serves. Access to Information in respect of decision making is a necessary prerequisite for generating that trust and confidence. Informed members of the local community are better able to contribute to, and take part in, the work of Local Authorities. Access to information is central to this process and requires Local Authorities to establish the appropriate balance between:

- making information readily and openly available to the public; and
- ensuring that certain areas of personal/public life remain the legitimate object of confidentiality.

**1. SCOPE**

Rules 1 to 11 outline the rights of members of the public and apply to all meetings of the Council, the Overview and Scrutiny Committees, Cabinet, Audit Committee, Human Resources and Council Tax Committee, Licensing and Registration Committee (and its sub-committees), Planning Policy & Local Plan Committee, Planning Committee, Standards Committee and the Town and Parish Council Standards Sub-Committee, collectively called meetings.

Rule 12 relates to recording of Decisions by Officers.

Rule 13 deals specifically with Cabinet's schedule of key decisions by which future major decisions of the Council are publicised.

**2. ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any, more specific, rights to information contained elsewhere in this Constitution or the law for example the Data Protection Act 1998 and the Freedom of Information Act 2000.

**3. RIGHTS TO ATTEND MEETINGS**

Members of the public may attend all meetings subject only to the exceptions to these rules.

Any person is permitted to film or record any meeting of the Council, a Committee, Sub-Committee or the Cabinet, save where the public have been excluded for consideration of exempt or confidential business. The rules, as prescribed by legislation, will allow for the reporting of meetings via social media of any kind. The Council will provide reasonable facilities to facilitate reporting.

Any person exercising such rights must not disrupt the proceedings. Examples of what will be regarded as disruptive include, but are not limited to, moving outside the area designated for the public, making excessive noise, intrusive lighting/flash or asking a Councillor to repeat a

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statement. In addition, members of the public or the public gallery should not be filmed as this could infringe on an individual's right to privacy, if their prior permission has not been obtained. Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairman and may be asked to leave the meeting.

**4. NOTICES OF MEETING**

The Council will give at least five clear working days' notice of any meeting, except where an urgent meeting is convened, by making the agenda and reports publically available at the Town Hall, Station Road, Clacton-on-Sea, CO15 1SE (the "designated office") and on the Council's website.

**5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda, accompanying reports and background papers that are open to the public available for inspection at the designated office and on the website at least five clear working days before the meeting. If an item is added to the agenda after publication the revised agenda will be open to inspection from the time the item was added to the agenda.

Copies of the agenda and accompanying reports will be sent to the Councillors who serve on the decision-making body in question.

**6. SUPPLY OF COPIES**

Agendas, reports and background papers listed within Cabinet reports are available to view on the Council's website. The Council will on request, and for such reasonable charge as is from time to time agreed, supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any background papers listed within the reports; and
- (c) copies of any other documents supplied to Councillors in connection with an item to any person, on payment of a charge for postage and other costs, if the Proper Officer (Monitoring Officer) thinks fit.

**7. ACCESS TO MINUTES ETC AFTER THE MEETING**

In addition to publishing information on the Council's website, the Council will make available, upon request copies of the following for six years after a meeting:

- (a) the minutes of the meeting which will include a record of decisions taken, together with reasons. However where the meetings discussed exempt or confidential information the minutes open to the public will only include a record of the proceedings and the decision. The Council aims to publish minutes of meetings within 5 working days following the meeting;

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- (b) records of executive decisions taken by individual Cabinet Members or Officers, including the reasons for the decision and any alternative options considered and rejected. They will be published and made available as soon as reasonably practicable after they have been taken;
  - (c) the agenda for the meeting; and
  - (d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### **8.1 List of Background Papers**

In every report a list will be included of those documents (called background papers) relating to the subject matter of the report which in the report author's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but do not include published works or those which disclose exempt or confidential information as defined in Rule 10.

### **8.2 Public Inspection of Background Papers**

The Council will make available for public inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.

Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection. Arrangements for inspection should be made through the Council's Committee Services at the Town Hall and on the Council's website.

In the case of reports to Cabinet, the background papers will be published on the Council's website, subject to Rule 10 below.

The Council may now charge "a reasonable fee" for access to background papers to be inspected at the Council's offices.

## **9. SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept and be available to the public at the Town Hall, Station Road, Clacton-on-Sea.

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

**10.1 Confidential Information – Requirement to Exclude Public**

The public will be excluded from meetings whenever it is likely in view of the nature of the business to be transacted, or the nature of the proceedings, that confidential information would be disclosed.

**10.2 Meaning of Confidential Information**

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

**10.3 Exempt Information – Discretion to Exclude Public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted, or the nature of the proceedings that exempt information would be disclosed which falls into one of the seven definitions of information that is exempt from disclosure to the public and press.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

**10.4 Meaning of Exempt Information**

Exempt information means any information falling within the following seven categories (subject to any condition) as defined in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended):

Category	Condition
1. Information relating to any individual.	
2. Information which is likely to reveal the identity of an individual.	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Information is not exempt information if it is required to be registered under:- <ul style="list-style-type: none"> <li>(a) The Companies Act 1985;</li> <li>(b) The Friendly Societies Act 1974;</li> <li>(c) The Friendly Societies Act 1992;</li> </ul>

<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p> <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>6. Information which reveals that the authority proposes:-</p> <p>(a) To give under any enactment or notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) To make an order or direction under any enactment.</p> <p>7. Information relating to any action or any action proposed to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>(d) The Industrial and Provident Societies Acts 1965 to 1978;</p> <p>(e) The Building Societies Act 1986; or</p> <p>(f) The Charities Act 1993.</p> <p>“Financial and business affairs” includes contemplated, as well as past or current activities.</p> <p>Employee means a person employed under a contract of service. “Labour relations matters” means any matters specified in section 218(1)(a) to (g) of the Trade Union and Labour Relations (Consolidation) Act 1992. These matters also apply to office holders as to employees.</p>
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Notes:

- (a) Information falling within any of categories 1-7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.
- (b) Information which:-
  - (a) falls within any of categories 1 to 7 above; and
  - (b) is not prevented from being exempt by virtue of the condition is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
  - (c) Where the meeting will determine any person's civil rights or obligations, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article.

## **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Proper Officer (Monitoring Officer) thinks fit, the Council may exclude access by the public to reports which, in their opinion, relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with category of information likely to be concerned.

## **12. RECORDING OF DECISIONS BY OFFICERS**

### **12.1 Written Record**

A written record must be produced, as soon as reasonably practicable, after a decision has been made, which was delegated to an Officer by Council, a Committee or Sub-Committee either:

- (a) under an express authorisation; or
- (b) a general authority to take decisions which grant a permission or licence, affect an individual's rights or award a contract or incur expenditure, which in either case, materially affects the Council's finances.

### **12.2 Prescribed Format**

The written record must be in the prescribed format approved by the Monitoring Officer and Committee Services Manager and contain the following information:

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- (a) the date the decision was made;
  - (b) a record of the decision taken along with the reasons for the decision;
  - (c) details of alternative options, if any, considered and rejected; and
  - (d) where relevant, any conflicts of interest declared.

### **12.3 Public Inspection of Decision and Background Papers**

The Officer making the decision must ensure that the written record and background papers are made available for inspection by the public and published on the Council's website.

#### **APPLICATION OF RULES TO THE CABINET**

**Rules 13 to 21 apply to the Cabinet, any decisions taken by the Leader, Cabinet Members or Officers under the Scheme of Delegation. If any of these decision makers intend to take a key decision then it must also comply with Rule 13 unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A "key decision" is defined in Article 13.03 of this Constitution.**

### **13. PROCEDURE BEFORE TAKING KEY DECISIONS OR DECISIONS THAT WOULD INVOLVE THE DISCLOSURE OF CONFIDENTIAL OR EXEMPT INFORMATION**

**13.1** Subject to Rules 14 and 15 below, a key decision or a decision that would involve the disclosure or likely disclosure of confidential information must not be made until a notice has been published on the Council's website (under Forthcoming Decisions) for at least 28 clear days, containing the following details:

- (a) that a key decision is to be made, and details of the matter excluding (if applicable) any details that would reveal confidential or exempt information; or
- (b) that a decision that would involve the disclosure or likely disclosure of confidential information is to be made and details of the matter excluding any details that would reveal such confidential or exempt information;
- (c) the decision-maker's name and title, if an individual, or if it is a body, its name and full membership;
- (d) the date on which, or period during which, the decision is to be made;
- (e) a list of the documents already submitted to the decision-maker for consideration in relation to the matter and details of how to obtain copies; and
- (f) a statement that documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.

### **13.2 DEFINITIONS**



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A “Key Decision” is an executive decision that meets the description of a Key Decision set out in Article 13.03 of the Constitution.

“Confidential” and “Exempt” information are defined in, respectively, Access to Information Procedure Rules 10.2 and 10.4.

**14. GENERAL EXCEPTION**

Subject to Rule 15, if publication under Rule 13 above is impracticable, a key decision may only be made:

- (a) where the Proper Officer has informed the Chairman of the relevant Overview and Scrutiny Committee in writing of the matter about which the decision is to be made;
- (b) notice is given and published on the Council’s website of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days’ notice; and
- (c) at least five clear working days have elapsed between notice being given and the decision being taken.

**15. SPECIAL URGENCY**

If the general exception rule is impracticable, due to the date by which a key decision must be made, the key decision can only be taken if the decision-maker has received the agreement of the Chairman of the relevant overview and scrutiny committee, or if they are unable to act, the Chairman or Vice-Chairman of the Council and has published a notice on the Council’s website, stating that the making of the decision is urgent and the reasons why it cannot reasonably be deferred.

**16. REPORTS TO COUNCIL**

**16.1 When an Overview and Scrutiny Committee can require a Report**

If the relevant overview and scrutiny committee thinks that a key decision has been made and was not:

- (a) published in accordance with Rule 13.1; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement under Rule 15;

the Committee, by resolution at one of its meetings, may require the Cabinet to submit a report to full Council, within such reasonable time as the Committee specifies. The report to Council must include details of the decision, the decision maker and reasons why the Cabinet are of the opinion that the decision was not a key decision. The power to require a report rests with the Committee but may also be exercised by the Proper Officer on receipt of a written request, providing valid reasons to do so, from five members of the Committee.

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**16.2 Reports on Special Urgency Decisions**

The Leader will submit a report to the next practicable ordinary meeting of the Council on Cabinet decisions or executive decisions taken by individual Portfolio Holders or Officers where the making of the decision was agreed as urgent in accordance with Rule 15 since the last such report. The report will include the number of decisions made, the particulars of each decision made and a summary of the matters in respect of which those decisions were made.

**17. RECORD OF DECISIONS**

A written record must be produced, as soon as reasonably practicable, after a Cabinet (executive) decision has been made, including where Cabinet Members have made individual decisions and Officer's decisions have been made exercising executive functions in accordance with the Responsibility of Functions – Delegated Powers contained within Part 3 of this Constitution.

Each record must be in the prescribed format approved by the Monitoring Officer and Committee Services Manager and contain the following information:

- (a) the decision and the date it was made;
- (b) the reasons for the decision;
- (c) details of any alternative options considered and rejected; and
- (d) declarations of interest and details of any dispensations granted in respect of those interests.

The Record of the Executive Decision will be published on the Council's website together with any report considered at the meeting or by the individual Portfolio Holder or Officer and must be available for inspection, as soon as reasonably practicable. Any background paper must also be listed and one of each of the documents available for public inspection and published on the Council's website.

**18. PROCEDURES PRIOR TO A PRIVATE MEETING**

**18.1** At least 28 days before a private meeting of the Cabinet:-

- (a) notice of intention to hold the meeting must be made available at the Council's offices; and include a statement of the reasons for the meeting to be held in private;
- (b) details of any representations received about why the meeting should be held in public and a statement of its response to any such representations;
- (c) that Notice must list any decision that would involve the disclosure or likely disclosure of confidential information that is due to be made at that meeting together with details of the matter excluding any details that would reveal such confidential or exempt information; and

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(d) that Notice must be published on the Council's website.

**18.2** The Notice under 18.1 must include a statement of the reasons for the meeting being held in private.

**18.3** At least five clear days before a private meeting, a further notice of the intention to hold a meeting must be available and published on the Council's website. This will form the Cabinet agenda for the meeting.

**19. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET**

All Members of the Cabinet will be served notice of, and are entitled to attend, all private meetings of the Cabinet or Committees of the Cabinet.

The Chief Executive, the Chief Financial Officer, the Monitoring Officer (or Deputies) and the Corporate Directors in the light of items to be discussed, or their nominated representatives, at the discretion of the Chief Executive can attend.

**20. RIGHTS OF OVERVIEW AND SCRUTINY MEMBERS**

**20.1** Upon request from a member of an overview and scrutiny committee, the Cabinet **must** make available any document which contains material relating to any business transacted at a public or private meeting of the Cabinet and any decisions made (whether by individual Cabinet Members or Officers).

**20.2** This request must be complied with and the documentation provided as soon as reasonably practicable, but no later than 10 clear days after the request is made.

**20.3** If the Cabinet determines that material will not be provided, it must provide the member of the overview and scrutiny committee with a written statement, setting out its reasons for that decision.

**Limits on Rights**

The member of an overview and scrutiny committee will not be entitled to:

- (a) any document in draft form; or
- (b) any part of a document which contains exempt or confidential information unless it relates to an action or decision that is being scrutinised or to any review in a relevant overview and scrutiny committee's work programme; or
- (c) any exempt material which contains advice provided by a political adviser or assistant.

**21. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

**21.1 Material Relating to Previous Business**

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All Members will be entitled to inspect any document that is in the possession of, or under the control of, the Cabinet and contains material relating to any business previously transacted at a private meeting unless it contains exempt or confidential information, or the advice of a political adviser or assistant.

**21.2 Material Relating to Key Decisions**

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet, which relates to any key decision unless paragraph 21.1 above applies.

**21.3 Nature of Rights**

These rights of a Member are additional to any other rights they may have.

## BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

### 1. The Framework for Cabinet Decisions

The Council will be responsible for the adoption of its Budget and Policy Framework as set out in Article 4. Once a Budget or Policy Framework is in place, it will be the responsibility of the Cabinet to implement it.

### 2. Process for Developing the Policy Framework

The process by which the Policy Framework shall be developed is:

- (a) The Cabinet will publicise on the Council's website a timetable for making proposals to the Council for the adoption of any plan or strategy that forms part of the Policy Framework, and the Cabinet's arrangements for consultation after publication of those initial proposals. The Chairman of each Overview and Scrutiny Committee will also be notified. The consultation period shall in each instance be not less than 3 weeks.
- (b) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses to that consultation. If an Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. The Cabinet will take any response from an Overview and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.

Proposals from the Cabinet shall include recommendations regarding any aspects of the proposed plan or strategy that they consider full Council should delegate to the Cabinet the ability to vary.

- (c) Once the Cabinet has approved firm proposals, the appropriate Corporate Director will report them at the earliest opportunity to the Council for decision.
- (d) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, substitute its own proposals in their place or, with the exception of proposals in relation to the Corporate Plan, refer them back to the Cabinet for further consideration.
  - (i) If the Council decides not to adopt the Cabinet's proposals, the Council must inform the Leader of the objections which it has to the draft plan or strategy and instruct the Leader to require the Cabinet to reconsider the draft plan or strategy in the light of those objections.
  - (ii) Where the Council gives instructions in accordance with Rule 2(d)(i), it must specify a period of at least five working days beginning on the day after the

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date on which the Leader receives the instructions on behalf of the Cabinet within which the Leader may:

- (1) Submit a revision of the draft plan or strategy as amended by the Cabinet (the “revised draft plan or strategy”), with the Cabinet’s reasons for any amendments made to the draft plan or strategy, to the Committee Services Manager for consideration; or
  - (2) Inform the Committee Services Manager of any disagreement that the Cabinet has with any of the Council’s objections and the Cabinet’s reasons for any such disagreement.
- (e) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision that has immediate effect. Otherwise, it may only make an in-principle decision. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.
- (f) The decision will be publicised in accordance with Article 4 and a copy shall be given to the Leader.
- (g) An in-principle decision will automatically become effective on the expiry of the period specified in Rule 2(d)(ii) unless the Leader has submitted in writing to the Committee Services Manager a revision of the plan or strategy or informed them in writing of any disagreement that the Cabinet has with the Council in accordance with Rule 2(d)(ii).
- (h) In that case, the Chairman of the Council will call a Council meeting to be held on a date within 10 working days of receipt of the Leader’s written submission. The Council will be required to re-consider its decision taking into account the written submission provided by the Leader (which may either include a revised draft plan or strategy with reasons or the reasons for the Cabinet disagreeing with the Council’s objections to the draft plan or strategy). The Council may:-
- (i) approve the Cabinet’s recommendation by a simple majority of votes cast at the meeting; or
  - (ii) approve a different decision that does not accord with the recommendation of the Cabinet by a simple majority; or
  - (iii) approve the Cabinet’s proposed plan or strategy (whether in the form of a draft of revised draft) by a simple majority of votes cast at the meeting; or
  - (iv) approve a different decision that does not accord with the proposed draft or revised draft plan or strategy of the Cabinet by a simple majority.
- (i) The decision shall then be made public in accordance with Article 4, and shall be implemented immediately.

- (j) In approving the Policy Framework, the Council will also specify the degree of in-year changes to the Policy Framework that may be undertaken by the Cabinet, in accordance with paragraph 7 of these Rules. Any other changes to the Policy Framework are reserved to the Council.

**3. Process for Developing the Budget**

Subject to Rule 4 of these Procedure Rules, the process by which the Budget shall be developed is:

- (a) The Cabinet will publicise on the Council's website a timetable for making proposals to the Council for the adoption of the budget and the Cabinet's arrangements for consultation after publication of those proposals. The Chairman of each Overview and Scrutiny Committee will also be notified.
- (b) Prior to making any budget proposals in paragraph 3(a) above, the Cabinet will draw up a draft Financial Strategy/Forecast setting out the basis on which the budget proposals are intended to be formulated. The Cabinet shall consult the relevant Overview and Scrutiny Committee on the draft Financial Strategy/Forecast. The consultation period in this instance shall be not less than 3 weeks. At the end of that period the Cabinet shall agree the Financial Strategy/Forecast having regard to the response from that Overview and Scrutiny Committee.
- (c) The Cabinet shall draw up and consult on proposals for the budget having regard to the draft or agreed Financial Strategy/Forecast. If the relevant Overview and Scrutiny Committee wishes to respond to the Cabinet in that consultation process then it may do so. The consultation period shall be not less than 2 weeks.
- (d) At the end of that period, the Cabinet will then draw up firm proposals having regard to the responses for that consultation. The Cabinet will take any response from an Overview and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Cabinet's response.
- (e) Once the Cabinet has approved the firm proposals, the Chief Financial Officer will report them at the earliest opportunity to the Council for decision.
- (f) In reaching a decision, the Council may adopt the Cabinet's proposals, amend them, or substitute its own proposals in their place.
- (g) If it accepts the recommendation of the Cabinet without amendment, the Council may make a decision that has immediate effect. Otherwise, it may only make an in-principle decision, unless the Leader of the Council having consulted the Chief

Financial Officer indicates at the meeting Cabinet's acceptance of the amended budget. The Chairman of the Council will adjourn the meeting to allow the relevant consultation to take place. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.

- (h) Where the Council makes an in-principle decision, the Committee Services Manager shall immediately inform the Leader of any objections which it has to the Cabinet's proposals and shall give him instructions requiring the Cabinet, within 5 working days beginning on the day after the date on which the Leader receives those instructions, to reconsider in the light of those objections, the proposals submitted to it.
- (i) An in-principle decision will automatically become effective at the end of 5 working days beginning on the day after the date on which the Leader receives those instructions referred to in sub-paragraph (h) above, unless within that time the Leader:
  - (a) submits to the Committee Services Manager in writing a revision of the proposals as amended by the Cabinet ("the revised proposals") together with the Cabinet's reasons for any amendments made to the proposals; or
  - (b) informs the Committee Services Manager in writing of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.
- (j) In that case, the Chairman of the Council will call a Council meeting to be held on a date within 6 working days of receipt of the revised proposals or the Cabinet's disagreement. The Council will be required to re-consider its decision and to take into account the revised proposals, the Cabinet's reasons for any amendments made to the proposals, any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.

The Council may by a simple majority of votes cast at the meeting:-

- (i) confirm its original decision; or
  - (ii) adopt (with or without modification) the original proposal or, if there is one, the revised proposal; or
  - (iii) amend the original proposal or, if there is one, the revised proposal; or
  - (iv) substitute its own proposals.
- (k) The decision shall then be made public in accordance with Article 4, and shall be implemented immediately.



- (l) In approving the budget, the Council will also specify the extent of virement within the budget that may be undertaken by the Cabinet. Any other changes to the budget are reserved to the Council.

**4. Submission of Budget Proposals before 8<sup>th</sup> February**

In the event of the Cabinet submitting their firm proposals for the budget to Council before 8 February in any financial year and the Council has any objections to those proposals, the actions set out in Schedule 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 shall be followed.

**5. Decisions outside the Budget or Policy Framework**

- (a) Subject to the provisions of Rule 3(l) the Cabinet, individual members of the Cabinet and any officers discharging Cabinet functions may only take decisions which are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision which is contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to Rule 6.
- (b) If the Cabinet, individual members of the Cabinet and any officers discharging Cabinet functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Financial Officer as to whether the decision they want to make would be contrary to the Policy Framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those Officers is that the decision would not be in line with the existing budget and/or Policy Framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in Rule 6 shall apply.

**6. Urgent Decisions outside the Budget or Policy Framework**

- (a) The Cabinet, an individual member of the Cabinet or Officers discharging Cabinet functions may take a decision which is contrary to the Council's Policy Framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:
- (i) If it is not practical to convene a quorate meeting of the full Council; and
- (ii) If the Chairman of the relevant Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of full Council and the Chairman of the relevant Overview and Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the

absence of the Chairman of that Overview and Scrutiny Committee, the consent of the Vice-Chairman of that Overview and Scrutiny Committee will suffice. In their absence the Chairman of the Council's consent will suffice, and in their absence the consent of the Vice-Chairman of the Council.

- (b) Following the decision, the Leader will provide a full report to the next practicable ordinary meeting of the Council explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

## **7. Virement**

The Council's budget can only be varied by the Council except as provided for in the Financial Procedure Rules. These rules make provision for:

- (a) Virements – the transfer of sums between budgetary heads
- (b) Supplementary Estimates – the provision from reserves or from a specific provision of sums to increase the overall budget or the approval of negative Supplementary Estimates for the specific purpose of reducing the Council's net expenditure.

These rules specify the limits and procedures governing approval of these budget variations and may be varied from time to time by the Council to meet changing service and portfolio operational needs.

## **8. In-Year Changes to Policy Framework**

The responsibility for agreeing the Budget and Policy Framework lies with the Council, and decisions by the Cabinet, an individual member of the Cabinet or Officers discharging Cabinet functions must be in line with it. No changes to any plan or strategy that make up the Policy Framework may be made by those bodies or individuals except those:

- (a) which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint; or
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance; or
- (c) in relation to the Policy Framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration; or
- (d) relating to aspects of any plan or strategy where full Council has delegated to the Cabinet the ability to vary.

**9. Call-in of Decisions outside the Budget or Policy Framework**

- (a) Where an Overview and Scrutiny Committee is of the opinion that either a proposed decision or a decision which has been called-in under the Overview and Scrutiny Procedure Rules is or would be, contrary to the Council's Budget and Policy Framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Financial Officer.
- (b) The call-in procedures set out in Rules 13 and 17 of the Overview and Scrutiny Procedure Rules must be adhered to.
- (c) If, having had regard to the advice of the Monitoring Officer and/or Chief Financial Officer, which will be summarised within the Report, the Overview and Scrutiny Committee considers the decision is contrary to the Budget or Policy Framework; the Committee may refer the matter to the next practicable meeting of the Council, subject to the provisions of the Council Procedure Rules.
- (d) Council will receive a written report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Financial Officer. The Council may either:
  - (i) endorse a decision or proposal of the decision taker as falling within the existing Budget and Policy Framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (ii) amend the Council's Financial Procedure Rules or policy concerned to encompass the decision or proposal of the body or individual responsible for that Cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (iii) where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of the Monitoring Officer and/or Chief Financial Officer.

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**OVERVIEW AND SCRUTINY PROCEDURE RULES**

**1. OVERVIEW AND SCRUTINY COMMITTEES**

The Council will have two Overview and Scrutiny Committees (“the Committees”), which together will perform all overview and scrutiny functions on behalf of the Council. They will each consist of nine members, who will be appointed by the full Council (normally) at its annual meeting. Their terms of reference and functions will be as set out in Part 2, Article 6 of the Constitution.

**2. MEMBERSHIP**

All Councillors except Cabinet members may be members of the Overview and Scrutiny Committees. However, no Member may be involved in scrutinising a decision in which they have been directly involved in making.

**3. CO-OPTED MEMBERS (WITHOUT VOTING RIGHTS)**

Each Overview and Scrutiny Committee shall be entitled to appoint people as Co-opted Members (without voting rights) as considered appropriate to enable them to perform their overview and scrutiny functions. The duration of the appointment will be determined by the Committee. In addition, the Council may determine which groups or bodies should be represented on a particular Committee by Co-opted Members (without voting rights).

**4. MEETINGS OF THE COMMITTEE**

Meetings of the Overview and Scrutiny Committees will be held in accordance with the programme of meetings approved at the Annual Meeting of the Council. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the Chairman of the relevant Committee, or by the Head of Democratic Services & Elections, if considered necessary or appropriate.

Programmed meetings may also be cancelled, following consultation with the Committee's Chairman, where the business to be transacted would not warrant the holding of the meeting as originally envisaged.

**5. QUORUM**

The quorum for the Committee shall be as set out in Part 4 (Council Procedure Rules).

**6. CHAIRMEN**

The Chairmen of the Committees shall be appointed as set out in Part 4 (Council Procedure Rules).

The Chairmen of the Overview and Scrutiny Committees will meet with the Head of Democratic Services & Elections and relevant officers to co-ordinate the business of the relevant Committees and determine which Committee will assume responsibility for any particular issue. In consultation with the Chairman of the two Committees, it may be proposed that a joint Panel or Group to be established by the Committees.

**7. WORK PROGRAMME**

Each Overview and Scrutiny Committee will submit a work programme for the year ahead and a review of the previous year's activities to the Council for approval. In addition, it will be responsible for co-ordinating and prioritising its work programme on an ongoing basis.

In preparing, co-ordinating and prioritising its programme, each Overview and Scrutiny Committee will take into account:-

- The General Role and Principles of undertaking its functions, as set out in Part 2 Article 6
- the planned work on the preparation of elements of the Budget and Policy Framework;
- the need for statutory timetables to be met;
- the expressed wishes of the members of the committee;
- requests from the Cabinet to carry out reviews and/or suggestions from the liaison meetings held under the Cabinet Overview & Scrutiny Protocol; and
- requests from Members and/or Group Leaders in accordance with Rule 8.

**8. AGENDA ITEMS**

Any member of an Overview and Scrutiny Committee shall be entitled to give notice to the Head of Democratic Services & Elections that they wish an item relevant to the terms of reference and the functions of the Committee (but with the exception of matters relating to crime and disorder) to be included on the agenda for the next meeting of that Committee. Such notice must be given by delivering it, in writing (or by personal e-mail) to the Head of Democratic Services & Elections no later than midday seven working days before the day of the meeting. On receipt of such a notice the Head of Democratic Services & Elections will ensure that the item is included on the agenda.

Any such request by Members will be considered at the next available meeting where the Committee will decide if the item should form part of the work programme.

The Leader of any political group may request that an item be included on the Overview and Scrutiny work programme. The relevant Overview and Scrutiny Committee will consider the

request on the agenda and determine at its meeting, whether the item is appropriate for inclusion on the work programme.

The relevant Overview and Scrutiny Committee will respond, as soon as their work programme permits, to requests from the Council and if it considers appropriate, the Cabinet to review particular areas of Council activity. Such referrals will be accompanied by Council/Cabinet's view on the matter under consideration to assist the relevant Overview and Scrutiny Committee in effective investigation of the matter. Where they do so, the relevant Overview and Scrutiny Committee shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or Cabinet shall consider the report at its following meeting.

In addition to the above any member of the Authority who is not a member of the Council's designated crime and disorder committee (i.e. the Community Leadership Overview & Scrutiny Committee) can refer any local crime and disorder matter to that committee for its consideration in accordance with the legislative requirements. Such a reference must be given by delivering it, in writing (or by personal e-mail) to the Head of Democratic Services & Elections no later than midday seven working days before the day of the meeting. On receipt of such a notice the Head of Democratic Services & Elections will ensure that the item is included on the agenda. Any such reference by a Member will be considered at the meeting concerned where the Committee will decide how to proceed with the reference (within the legislative requirements).

## **9. COUNCILLORS CALL FOR ACTION**

The Councillors Call for Action is an additional means for Councillors to raise issues of local community concern, for consideration by the Council's overview and scrutiny function, on behalf of residents. A Councillors Call for Action should only be raised where other means of resolving the matter have been exhausted.

- (a) Any Member of the Council may raise a Councillors Call for Action, which should be sent to the Council's Head of Democratic Services & Elections.
- (b) Once the Councillors Call for Action is received, the matter must be considered by the relevant Overview and Scrutiny Committee, whose terms of reference the matter falls within and they must endeavour to consider the matter within a reasonable timescale. Where the matter falls within the terms of reference of more than one Committee, the Chairmen of the Committees will determine the most appropriate Committee to deal with the matter, except where the matter relates to a crime and disorder issue where all such matters must be considered by the Overview and Scrutiny Committee responsible for crime and disorder matters.
- (c) If a Councillors Call for Action is deemed not to be valid, a letter will be sent to the Member concerned informing them of the reasons for this. Where the issue has been deemed not to be valid because other methods of resolution have not been exhausted,

the Call for Action may be re-submitted, if necessary, once the Councillor concerned has pursued the matter further.

**10. PROCEDURE AT COMMITTEE MEETINGS**

- (a) The Committees shall consider the following business:
- (i) Minutes of the last meeting;
  - (ii) Declarations of Interest;
  - (iii) Consideration of any matter referred to the Committee for a decision in relation to the call-in of a decision;
  - (iv) Any Councillors Call for Action raised in accordance with Overview and Scrutiny Rule 9;
  - (v) Questions submitted pursuant to Council Procedure Rule 38;
  - (vi) Work Programming Issues (having due regard to the General Role and Principles as set out in Article 6 of the Constitution) which shall include:
    - (1) Matters raised by a Member/Group Leader under Overview and Scrutiny Rule 8;
    - (2) Questions raised on forthcoming executive decisions in accordance with Overview and Scrutiny Procedure Rule 13;
    - (3) Responses of Council/Cabinet/Partners to reports and/or recommendations of the Overview and Scrutiny Committee;
    - (4) Responses of the Cabinet to called-in decisions referred to reconsideration; and
    - (5) Summary of forthcoming (and completed) enquiries as directed by Council or otherwise approved by the Committee for that year.
  - (vii) Interim and/or Finalised Reports from Task and Finish Groups on enquiries undertaken by those Groups; and
  - (viii) The business otherwise set out on the agenda for the meeting.
- (b) Where an Overview and Scrutiny Committee undertakes researched and evidence reviews on a specific topic, on a task and finish basis (e.g. with a view to policy development), the relevant Committee may also ask people to attend to give evidence

at the Task and Finish Group meetings that are to be conducted in accordance with the following principles:

- (i) that the terms and reference of any Task and Finish Group must be agreed by the relevant Overview and Scrutiny Committee prior to its commencement;
  - (ii) consideration being given to the Council's priorities and resources when making researched and evidenced recommendations and referral decisions as an outcome of the scrutiny;
  - (iii) that the reviews be conducted fairly and all members of the Task and Finish Group be given the opportunity to ask questions of attendees, and to contribute and speak;
  - (iv) that those assisting the Task and Finish Group by giving evidence be treated with respect and courtesy; and
  - (v) that the review by the Task and Finish Group be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any Task and Finish review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

**11. POLICY REVIEW AND DEVELOPMENT**

- (a) The role of the Overview and Scrutiny Committees in relation to the development of the Council's Budget and Policy Framework is set out in detail in the Budget and Policy Framework Procedure Rules within this Constitution.
- (b) In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, each Overview and Scrutiny Committee may make proposals or act as consultee for the Cabinet for developments in so far as they relate to matters within their terms of reference.
- (c) Each Overview and Scrutiny Committee where relevant to their terms of reference, may undertake enquiries into the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. Enquiries may involve Councillors going on site visits, conducting public surveys, holding public meetings, commissioning research and doing all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so (subject to the appropriate budget being available).



**OVERVIEW AND SCRUTINY PROCEDURE RULES**

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- (d) To assist Members of the Overview and Scrutiny Committees to develop appropriate approaches to individual enquiries (and support officers in their role for individual enquiries), the Head of Democratic Services & Elections may (from time to time) issue practice guides on such approaches.
- (e) Where resources permit, each Overview and Scrutiny Committee may establish, task and finish groups to undertake the matters in (c) above and to gather the evidence in the ways set out. Likewise, enquiries may also be conducted through informal meetings of the Members of the Committee, scrutiny days and off agenda briefings. Joint task and finish groups (which may be styled panels) may be formed, where necessary, by two Overview and Scrutiny Committees in agreement to examine subjects that are, in part, in both of the terms of reference for those Committees.

Membership of task and finish groups will not be limited to members of the relevant Overview and Scrutiny Committee(s). While they are not subject to the political balance rules that apply to formal Committees/Sub-Committees of the Council, from among the nominees for a particular task and finish group regard will be given to the broad overall political balance of the Council when determining the membership of the group.

- (f) All enquiries undertaken away from a formal meeting of the relevant Overview and Scrutiny Committee will conclude with a final report to that Overview and Scrutiny Committee. It will be for that Committee to determine the finalised report and recommendations arising from the enquiry. An enquiry can identify the need for an interim report, ahead of the final report, and this too will be subject to consideration by the relevant Overview and Scrutiny Committee.

If Full Council has directly requested a report on that matter then the final report will be submitted to Full Council for its determination.

**12. REPORTS FROM AN OVERVIEW AND SCRUTINY COMMITTEE**

- (a) Specific evidence based reports from an Overview and Scrutiny Committee that contain recommendations on proposals for development, will be submitted formally for consideration by Cabinet (or to Full Council directly (if appropriate) from the “crime and disorder committee” or otherwise if Full Council has directly requested a report on that matter). If the proposals would involve a change to the existing Budget and/or Policy Framework, the Cabinet will consider the matter and make a recommendation to Full Council. The report will be drafted by Officers and agreed by the relevant Chairman in respect of the proposals from the relevant Overview and Scrutiny Committee.
- (b) The Cabinet shall consider the report from the relevant Overview and Scrutiny Committee at the next meeting of the Cabinet for which the agenda has not yet been published.

- (c) In addition to making recommendations on specific proposals for development, the Overview and Scrutiny Committees may make more general comments/suggestions regarding matters they have considered, which they would like the relevant Cabinet Member to consider and take appropriate action. In such instances, a copy of the relevant minute will be sent to the Cabinet Member.
- (d) Where specific evidence-based recommendations on proposals for development from the Overview and Scrutiny Committees relate to matters that are the responsibility of Partner Authorities and organisations, notice in writing by way of a formal report will be provided to the relevant Partner Authority or organisation requiring them to have regard to the recommendations. The Partner or organisation will be requested to respond to the relevant Committee within two calendar months setting out action, if any, that is to be taken in response to the recommendations.

### **13. SCRUTINY OF PROPOSED AND RECENT DECISIONS**

The Overview and Scrutiny Committees will, at their ordinary meetings, review the new and/or amended forthcoming decisions relevant to their terms of reference. If they wish to enquire into any forthcoming decisions, such an enquiry might consist of questioning members of the Cabinet and Officers, and seeking the views of local stakeholders and/or other interested parties. The Cabinet will take into account any recommendations expressed by the relevant Overview and Scrutiny Committees when determining the final decision and record their response within any report and/or decision.

Matters may only be raised on the forthcoming decisions at Committee meetings where the Member has notified the Head of Democratic Services & Elections in writing (or by personal email) of the question they wish to ask, no later than Midday, two working days before the day of the meeting.

The Overview and Scrutiny Committee shall also be provided with a list of decisions by Cabinet/an individual Portfolio Holder taken since the Committee's last ordinary meeting and which that previous meeting had not itself had notice of in the record of forthcoming decisions. As such, if after preparation of the agenda for an ordinary meeting of an Overview and Scrutiny Committee notice of a proposed decision is given and the decision then is taken prior to the following ordinary meeting of the Committee, that second meeting of the Committee will be advised of the decision. This list is for the purposes of completeness and to inform the work programme discussion of the Committee. Other than informing this process the Committee may only note the list.

### **14. RIGHTS OF COMMITTEE MEMBERS TO DOCUMENTS**

- (a) In addition to their rights as Councillors, members of the Overview and Scrutiny Committees in fulfilling their functions have the right to documents, and as provided for in Access to Information Procedure 20 (Rights of Overview and Scrutiny Members).

- (b) This would not prevent more detailed liaison between the Cabinet and any Overview and Scrutiny Committee as appropriate.

**15. MEMBERS AND OFFICERS GIVING ACCOUNT**

- (a) It shall be for the relevant Management Team member to determine which Officers attend to provide advice to Overview and Scrutiny Committees, subject to each Committee being able to supplement this as thought necessary through (b), (c) and (d) below: However, the Chief Executive, Chief Financial Officer and Monitoring Officer have the right to attend, speak on an item of business, provide representations and present a report to discharge their statutory and constitutional duties whenever necessary. In such instances, the Overview and Scrutiny Committee will give due regard of the relevant advice provided. The decision and minutes of the meeting will record the advice, how it was taken into account and reasons for any departure.
- (b) Any Overview and Scrutiny Committee may scrutinise and review decisions made or action taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the Overview and Scrutiny role, it may require any Cabinet Member, or any Senior Officer to attend before it to explain in relation to matters within their remit:
  - (i) any particular decision or series of decisions (excluding decisions made as a consequence of a hearing/decision on an application by the Planning, Licensing and Registration, Audit, Human Resources and Council Tax or Standards Committees or Sub-Committees/Panels of those Committees); and/or
  - (ii) the extent to which the actions taken implement Council policy.
- (c) Where any Cabinet Member or Senior Officer is required to attend a meeting of the relevant Overview and Scrutiny Committee, at least seven working days' notice of the meeting at which they are required to attend shall be given. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the relevant Committee. Where the account to be given to the Committee will require production of a report, then the Member or Officer concerned will be given sufficient notice to allow for the preparation of that document.
- (d) Where, in exceptional circumstances, the Cabinet Member or Senior Officer is unable to attend on the required date, the Chairman of the relevant Committee, shall, in consultation with the Member or Officer, arrange a substitute or an alternative date for attendance.
- (e) Participation by any Cabinet Member(s) in the general debate of the Overview and Scrutiny Committees will be at the discretion of the relevant Chairman (this rule does not apply when the Committee is considering a call-in).

- (f) In this paragraph, reference to an Overview and Scrutiny Committee includes enquiries undertaken through informal meeting of the Members of the Committee, task and finish groups, scrutiny days and off agenda briefings etc.

**16. ATTENDANCE BY OTHERS**

Each Overview and Scrutiny Committee may, in so far as it relates to matters within their terms of reference, invite people other than those referred to in paragraph 15 above to address them, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and Officers in other parts of the public sector and may invite such people to attend. Attendance by those invited is entirely optional but encouraged in the spirit of partnership working and community engagement.

All such invitations will be made through the Head of Democratic Services & Elections, in his capacity as the Council's designated Scrutiny Officer (Article 12 of the Constitution), so that a consistent and co-ordinated approach to invitations can be maintained. All such requests from individual Members shall be referenced to the Head of Democratic Services & Elections. This approach shall be followed in respect of less formal overview and scrutiny enquiries (such as through task and finish groups).

**17. CALL-IN**

When a decision is made by the Cabinet, or an individual member of the Cabinet, the decision is published, normally within five working days of being made. The Chairman of the relevant Overview and Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision. Decisions will also be sent to all Members.

That notice will include the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the decision is called-in.

- (a) The rules applying to call-in are:
- (i) All executive decisions taken at Cabinet meetings, or by individual Cabinet Members or by Officers (who are making a Key Decision as defined in Article 13.03), may be called-in, subject to the exceptions outlined in Procedure Rule 18;
  - (ii) Prior to holding a call-in, the callers-in are expected to attempt to resolve the matter through informal mediation, together with the relevant Cabinet Member and/or the Leader of the Council, if appropriate to do so;
  - (iii) The Committee Services Manager, will process call-in notices received from:

- a. The Chairman of the relevant Overview and Scrutiny Committee; or
- b. Three Non-Cabinet Members of the Council.

All valid call-in notices will be referred to the relevant Overview and Scrutiny Committee for determination and the decision-maker will be notified of the call-in.

- (iv) A notice of call-in must be made on the appropriate prescribed form or email (so long as the email addresses the relevant information required) and must be received within five working days of the date of publication of the decision. Use of the prescribed form is encouraged, and should be completed in full, with reference to the criteria for submitting call-in requests and stating the reasons why the issue needs to be scrutinised.
  - (v) Individual decisions taken by Non-Executive Committees (Planning, Licensing, Standards and Audit Committees) cannot be the subject of call-in; and
  - (vi) Any decision can only be called-in once.
- (b) Those seeking to call-in a decision shall be required to state their reasons, in accordance with the criteria set, in the call-in notice form based on one or more of the following seven assessment criteria. These seven criteria are as follows:
- (i) The decision-maker has failed to consult relevant people, or bodies, in contravention of defined Council policies or procedures.
  - (ii) The decision is contrary to the Council's Budget or Policy Framework.
  - (iii) The decision is not consistent with Council policy.
  - (iv) The decision-maker did not take into account relevant considerations or other material factors and therefore, the decision is unreasonable.
  - (v) The decision is contrary to a previously agreed decision made in Full Council, which has not been superseded by a subsequent decision.
  - (vi) The decision is inconsistent with a previous Overview and Scrutiny recommendation that has been accepted by Cabinet or Council and that recommendation has not been superseded by a subsequent decision.
  - (vii) The decision was not taken in accordance with the principles set out in Article 13 (Decision-Making) of the Constitution.
- (c) **Mediation Process**

OVERVIEW AND SCRUTINY PROCEDURE RULES

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- (i) Those seeking to call-in a decision shall state, when providing their reasons in the call-in notice, whether they wish to enter into mediation with the relevant Cabinet Member(s) and if so, what element of the decision and/or further information would they wish to discuss as part of the mediation.
  - (ii) Once those seeking the call-in have provided this information, the relevant Cabinet Member(s) must respond and confirm whether they wish to engage with the mediation process.
  - (iii) Upon confirmation that the parties wish to mediate, Committee Services will set up a mediation, at which Officer(s) with knowledge of the background to the decision can attend to assist with providing or clarifying any information.
  - (iv) The mediation meeting must be held no later than three working days before the date of any meeting arranged to allow consideration of the call-in by the relevant Overview and Scrutiny Committee.
  - (v) The Council's Monitoring Officer and/or Section 151 Officer (or their appointed deputies) may attend the mediation meeting at their individual discretion.
  - (vi) The Officer from Committee Services attending the mediation, will within 24 hours, produce a note for circulation to all parties to the meeting for approval. That note must include any and all assurances given by, or agreements reached with the Cabinet Member(s).
  - (vii) Once those assurances or agreements are subsequently confirmed as being acceptable by all parties in writing then the call-in will be treated as having been dealt with and any further required action in relation to the decision will be undertaken in accordance with the Council's Constitution.

The Mediation Process does not preclude the relevant Cabinet Member(s), upon being made aware of the call-in and the reasons for it, making an immediate, unilateral undertaking to amend or rescind their decision or undertake any other appropriate action. Committee Services will inform the callers-in of such unilateral undertaking and ask if they are satisfied by that undertaking. If the callers-in confirm the undertaking as being acceptable to them in writing then the call-in will be treated as having been dealt with and any further required action in relation to the decision will be undertaken in accordance with the Council's Constitution.

- (d) The submission of a call-in notice shall have the effect of suspending the implementation of the decision pending consideration of the matter by the relevant Overview and Scrutiny Committee, who must meet to consider the matter within 15 working days from the date following receipt of the call-in notice.

If the relevant Committee does not meet within this period, the decision shall take effect on the expiry of the 15 working day period. The Chairman of the relevant Overview and Scrutiny Committee is under an obligation to ensure that the meeting is held within 15 days.

If the relevant Overview and Scrutiny Committee has already commented or made recommendations on the specific matter which has been called-in prior to the decision

being made then it will be deemed to be pre-determined on the matter and the call-in will be considered by another Overview and Scrutiny Committee.

- (e) At the meeting to consider the call-in notice, the Overview and Scrutiny Committee shall limit its consideration to the reasons stated in the call-in notice.
  - (i) The layout of the meeting will provide separate tables for both the callers-in and the relevant Cabinet Member to sit at for the item of the call-in.
  - (ii) Stage One of the meeting – the Councillor(s) requesting the call-in shall attend and explain their objections to the decision and the reasons for the call-in against the stated criteria.
  - (iii) Stage Two – the decision-maker (relevant Cabinet Member and relevant officer) shall establish the reasons behind the decision and can determine whether it should be referred back to the Cabinet Member for consideration.
  - (iv) Stage Three – Questions can be asked by:
    - a. The callers-in;
    - b. The relevant Cabinet Member or relevant Officer; and
    - c. The Committee.

All questions will be at the discretion of the Chairman, taking account of relevance to the subject matter.

- (f) It should be noted that, although a decision may be deemed to meet the criteria for call-in, this does not automatically mean the matter should be referred back to the decision-maker. There may be compelling reasons for the decision being made and all evidence should be heard before determining what action should be taken.
- (h) Participation in the general debate will not be permitted but the callers-in and relevant Cabinet Member may answer questions or points of clarification arising through the debate, at the discretion of the relevant Chairman.
- (i) On considering the matter, the Committee will decide whether or not to ask the decision-maker to reconsider its decision.
- (j) If, having had regard to the advice of the Monitoring Officer, which will be summarised within the Report, the Committee considers the executive decision is contrary to the Budget or Policy Framework; the Committee may refer the matter to the next practicable meeting of the Council, subject to the provisions of Council Procedure Rules.
- (k) If the relevant Overview and Scrutiny Committee decides to ask the decision-maker to reconsider their decision, the decision-maker shall be required to do so within 15 working days following the meeting of the relevant Overview and Scrutiny Committee, unless the decision maker was an Officer in which case it will be referred back to the Leader of the Council or relevant Portfolio Holder for consideration. In that

circumstance the Leader of the Council or relevant Portfolio Holder shall be required to reconsider the decision within 15 working days.

- (l) If the Overview and Scrutiny Committee decides that it does not wish to refer the matter back to the decision-maker or to Council, the decision shall be confirmed and take effect immediately following the meeting of the Committee.
- (m) If the matter is referred to Council, who do not object to the decision, the subject of call-in, no further action is necessary and the decision will be effective on the date of the Council meeting. If Council does object, it only has authority to make decisions where it is considered contrary to the Budget and Policy Framework. The Council must refer any decision relating to Cabinet Functions, to which it objects, back to the decision-maker, together with the Council's views on the decision. The decision-maker shall, within a further 15 working days, choose whether to amend the decision or not before reaching a final decision and implementing it.

(n) **Decisions referred back to the Decision Maker**

The comments and views provided by Council or the relevant Overview and Scrutiny Committee when referring a decision back for reconsideration shall be final and no further representations shall be made to the decision-maker.

The decision-maker will send a report to the relevant Overview and Scrutiny Committee, once a decision has been reconsidered, and that report should include the reason why the decision-maker has either reconfirmed the original decision or why the decision has changed.

(o) **Withdrawal of a Call-in**

A request to call-in a decision may be withdrawn in writing (or by personal email) at any time by one of the Members making the request.

**18. EXCEPTIONS TO CALL-IN**

The call-in procedure set out above shall not apply in respect of Cabinet decisions regarding the following:

(i) Urgent Decisions

A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public interests. The record of the decision, and notice by which it is made public, shall state whether in the opinion of the decision-making person, or body, the decision is an urgent one and why, and therefore not subject to call-in.

The Chairman of the relevant Overview and Scrutiny Committee must agree that the proposed decision is reasonable in all its circumstances and that it should be treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent



shall be required. In the absence of both, the Head of Paid Service or his/her nominee's consent shall be required.

Decisions taken as a matter of urgency must be reported by the Leader to the next practicable ordinary meeting of the Council, together with the reasons for urgency.

(ii) Other Exceptions

- (a) "Provisional" or "in principle" decisions where the issue is to be referred to an Overview and Scrutiny Committee for comment.
- (b) Recommendations from Cabinet to Council.
- (c) Decisions by the Cabinet where the issue has been referred to them by the Council or an Overview and Scrutiny Committee for their view or comment shall not be subject to call-in.
- (d) Unless the decision has taken into account new material considerations arising since the original consultation with the Council or an Overview and Scrutiny Committee a decision by the Cabinet in response to such consultation shall not be subject to call-in.
- (e) Where Full Council has delegated to the Cabinet the ability to approve additional information in respect of the Corporate Plan to ensure that statutory publishing deadlines are met, such decisions shall be construed as urgent for the purposes of Rule 18(i) above. In such circumstances the Chairman of the relevant Committee, or other Chairman or Vice-Chairman so authorised to act in his absence, will only be required to agree that the proposed decision is reasonable in all the circumstances.

- (iii) The operation of the provisions relating to call-in and urgency shall be monitored in accordance with Article 15 of this Constitution and a report submitted to Council with proposals for review if necessary.

**FINANCIAL PROCEDURE RULES**

**1. INTRODUCTION**

- 1.1 Subject to meeting any requirements contained in the Key Decision Rules and the Decision Making Rules, the Council will conduct its financial affairs based upon its Budget and Policy Framework Procedure Rules, together with these Financial Procedure Rules and the Procurement Procedure Rules. These Financial Procedure Rules set out the responsibilities and management arrangements that will be followed to ensure that the Council, Members and its Officers exercise due probity and accountability for the public monies for which they have responsibility. These rules and the Procurement Procedure Rules apply to all financial transactions of the Council either for itself or where it is acting as the Accountable Body or Agent.
- 1.2 The Chief Financial Officer shall keep under review these Financial Procedure Rules and the Procurement Procedure Rules and ensure that they are appropriate to the running of the Council. Any proposed changes must be recommended to the Cabinet and subsequently agreed by the Council.

The Financial Procedure Rules are set out as follows:

<b>SECTION</b>	<b>TOPIC COVERED</b>
2.	Definitions
3.	Responsibilities
4.	Financial Planning and Budget approval
5.	Authority to Incur Expenditure
6.	Changes to budgets after approval by Council
7.	Financial management of budgets during the year
8.	Final accounts, out-turn and Statement of Accounts
9.	Financial administration
10.	Write-Offs of Sums due to the Council
11.	Insurances
12.	Inventories stocks and stores
13.	Banking Arrangements
14.	Investments, Loans and Borrowing
15.	Land and Property transactions
16.	External Funding
17.	Proceeds of Crime Act 2002 (anti-money laundering)
18.	State Aid

**2. DEFINITIONS**

For the purpose of these regulations the following definitions will apply:

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<b>TERM</b>	<b>DEFINITION</b>
<b>Head of Department</b>	The term of Head of Department refers to the officer to whom responsibility for a department, function or action has been delegated in accordance with the Council's Scheme of Delegation.
<b>Service</b>	Service shall be those services as set out in the Council's published budget book or where subsequent amendments have been approved.
<b>Estimate</b>	Each line of budget included within each service, or each project line included in the Capital Programme, in the Council's published budget book or where subsequent approval has been given.
<b>Forecast</b>	An estimate of the likely budget for the years following the financial year for which an estimate has been approved.
<b>Expenditure</b>	All direct expenditure as detailed in the Council's published budget book or where subsequent approval has been given.
<b>Income</b>	All direct income as detailed in the Council's published budget book or where subsequent approval has been given.
<b>Virement</b>	A virement is the transfer of a sum from one estimate to another and may include an increase in expenditure provided it is financed by additional income not already provided in the approved budgets.
<b>Supplementary Estimate</b>	This is an increase in the budget approved by Council and can be in respect of either capital or revenue. A transfer from reserves would finance the additional expenditure.
<b>Negative Supplementary Estimate</b>	A negative Supplementary Estimate is the reverse of a Supplementary Estimate and has the effect of reducing an otherwise available budget with the specific purpose of reducing the Council's net expenditure. A transfer to reserves would arise as a result of reducing expenditure.
<b>Section 106 Agreement</b>	Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

### 3. RESPONSIBILITIES

- 3.1** The Leader, each Portfolio Holder and Head of Department shall consult with the Chief Financial Officer, in advance, in respect of any report/proposal which seeks provisional or final approval to any proposed revenue or capital expenditure or service investment or income which is not included in the Council's approved budgets (without

reservation). The Chief Financial Officer will bring all such matters to the immediate attention of Management Team.

- 3.2 The Chief Financial Officer shall be responsible, under the general direction of the Cabinet and Management Team for the financial administration of the Council's activities.
- 3.3 The Chief Financial Officer is responsible for ensuring that the Corporate Finance & Governance Portfolio Holder is informed of and consulted on all significant financial issues.
- 3.4 The Chief Financial Officer shall inform and advise Management Team about the Council's finances and financial performance of its activities, who will in conjunction with the Corporate Finance & Governance Portfolio Holder ensure that the Leader, each Portfolio Holder, Committees and Council are advised appropriately.
- 3.5 The Chief Financial Officer shall ensure that adequate and prudent financial planning, including annual budgets and longer-term forecasting, is undertaken by the Council to protect its finances.
- 3.6 Any requirement in these Financial Procedure Rules and the Council's other procedures to obtain approval for or to report to the Council, Committee, Cabinet or Portfolio Holder, on any action shall include the requirement to consult with the Chief Financial Officer where Council finances are concerned.
- 3.7 The Chief Financial Officer has a duty to ensure that the financial implications of decisions made by Heads of Department in respect of services are not to the detriment of the Council as a whole.
- 3.8 The Chief Financial Officer, their Deputy or the Chief Executive is authorised to deal with any General Fund Revenue or HRA virement on exceptional grounds of urgency, such as civil emergencies. If this exemption is relied upon, the relevant Officer must provide a report to the responsible decision maker as soon as practicably possible.

#### 4. FINANCIAL PLANNING AND BUDGET APPROVAL

- 4.1 In accordance with the timetable and format determined by the Chief Financial Officer, Heads of Department will prepare:
  - 4.1.1 Detailed revised estimates of income and expenditure of revenue accounts for the current financial year
  - 4.1.2 Detailed revised estimates of expenditure on capital projects for the current financial year

- 4.1.3** Detailed forecasts of expenditure on capital projects for the forthcoming financial years, the number of which is to be determined by Cabinet.
- 4.1.4** Detailed forecasts of income and expenditure of revenue budgets for the forthcoming financial years, the number of which to be determined by Cabinet.
- 4.2** The information prepared by the Heads of Department will be collated and checked by the Chief Financial Officer.
- 4.3** Each financial year, and in accordance with the agreed Financial Strategy/Forecast determined in accordance with the Budget and Policy Framework Procedure Rule 3, the Chief Financial Officer will submit to Management Team for their consideration:

  - 4.3.1** A forecast of net revenue expenditure for the forthcoming year(s);
  - 4.3.2** A forecast of capital expenditure for the forthcoming year(s) together with known and anticipated funding streams. All such schemes must be in accordance with the Council's approved Capital Strategy and will have been subjected to an investment appraisal in accordance with the Prudential Code and will only be included if it can be demonstrated that the investment is prudent and within affordable and sustainable levels;
  - 4.3.3** The forecast position of the Council's Reserves over the period of the forecast;
  - 4.3.4** The Council Tax rate for the forthcoming financial year(s) resulting from the proposals;
  - 4.3.5** Initial draft revised prudential indicators for the current year and the following 3 years based on the draft capital programme.
  - 4.3.6** Any other information required in accordance with the Financial Strategy/Forecast agreed for the year in question.
- 4.4** Management Team will then, in the light of the Chief Financial Officer submission in 4.3 above, and in accordance with the Budget and Policy Framework Procedure Rule 3, make recommendations to the Cabinet setting out proposed draft budgets.
- 4.5** The Cabinet will, in accordance with the Budget and Policy Framework Procedure Rule 3, draw up firm proposals for consideration by the Council.
- 4.6** In submitting the budget to the Council the Cabinet may attach a reservation to any item and, subject to the approval of the Council, no avoidable expenditure shall be incurred in respect of any such item until the Council has withdrawn the reservation.

**5. AUTHORITY TO INCUR EXPENDITURE**

In relation to all expenditure both revenue and capital, however funded, and in accordance with delegated powers an approved scheme is one where there is:-

- (a) Provision of a service consistent with an historic nature and level that is, and has in prior years, been specifically allocated and defined within the ongoing base Budget;
- (b) Any change to a service set out in (a) above where the appropriate authority to the change has been obtained in accordance with delegated powers;
- (c) Otherwise, a scheme that has the necessary approval from Council, Cabinet, Portfolio Holder or Officer in accordance with delegated powers.

For any expenditure to be incurred the necessary budget must also be in place. Where the necessary budget is not in place then amendments to the budget agreed by Council can only be made in accordance with section 6 below.

**6. CHANGES TO BUDGETS AFTER APPROVAL BY COUNCIL**

**6.1 Supplementary Estimates**

- 6.1.1** A supplementary estimate will increase the Council's net expenditure and will, if it relates to revenue expenditure, result in a reduction in the Council's reserves. If it relates to capital expenditure it will either increase the Council's use of capital receipts, increase the amount needed to be borrowed or, as in the case of revenue expenditure, reduce the Council's reserves. Therefore a supplementary estimate is needed in all cases of increased overall net expenditure, whether capital or revenue.
- 6.1.2** A supplementary estimate should not normally be considered unless the matter is essential and unavoidable and all other options for applying a virement have been considered.
- 6.1.3** Once the Council Tax for any financial year is set any subsequent increase in items (a) to (d) below for that same year will require a supplementary estimate. This does not have to be approved before a commitment is made, if in the opinion of the Chief Financial Officer, the matter is urgent. The Chief Financial Officer shall report any increase in the Council's overall net expenditure to the Cabinet at the earliest opportunity and recommend to Cabinet whether the increased expenditure should be financed by virement or supplementary estimate. If the supplementary estimate is outside the scope of the Cabinet's authority appropriate recommendations will be made to Council.

- (a) Salaries, wages and pensions increases arising from nationally negotiated decisions, and variations in contributions under the National Insurance and Superannuation Acts;
- (b) Price increases in connection with continuing contracts for revenue services where, in the opinion of the Chief Financial Officer, such increases are reasonable;
- (c) Reductions in the amount of income from government, local or public authority sources;
- (d) Interest rates or other similar financing factors.

**6.1.4** No specific supplementary estimate approval is required at any time for the following:

- (a) Expenditure which is being funded entirely by income received under section 106 agreements and held in the section 106 receipts in advance holding account where that expenditure is in accordance with the terms of the section 106 agreement. In these circumstances the Chief Financial Officer must agree the expenditure, and the financing.
- (b) Debt written off for which specific provision was made in the Council's bad debt provision at the end of the previous financial year.
- (c) Expenditure on a specific activity that has previously been approved in accordance with the Council's constitution and for which the funding of that expenditure in future years has been placed in a dedicated earmarked reserve, and the expenditure is to be financed by the use of that reserve. In these circumstances the Chief Financial Officer must agree the expenditure, and the financing.
- (d) For expenditure where the Council receives full funding from an external source for a specified project and there are no additional revenue costs to the Council in either the current financial year or future financial years.

**6.1.5** A supplementary estimate can be approved as follows:

- (a) **Finance and Corporate Resources Portfolio Holder** may approve a supplementary estimate of any single item (revenue or capital) up to £50,000 subject to a maximum aggregate value of £150,000 for such single items in any one financial year and providing any single supplementary estimate does not cause the total of supplementary

estimates approved by the Corporate Finance & Governance Portfolio Holder and Cabinet to exceed £1,000,000 for General Fund Services (capital or revenue) or £1,000,000 in respect of the Housing Revenue Account (capital or revenue) for the financial year concerned.

- (b) **Cabinet** may approve a supplementary estimate of any single item (revenue or capital) up to £500,000 subject to that supplementary estimate not causing the total of supplementary estimates approved by the Cabinet and the Corporate Finance & Governance Portfolio Holder to exceed £1,000,000 for General Fund Services (capital or revenue) or £1,000,000 in respect of Housing Revenue Account (capital or revenue) for the financial year concerned.
- (c) **Council** may approve a supplementary estimate up to any amount for General Fund or Housing Revenue Account. However Council must be advised if any decision is likely to result in the Council's agreed minimum working balance not being maintained for the current financial year and the length of the Council's approved financial strategy. In the case of the Housing Revenue Account, Council must be advised if any decision is likely to result in the Revenue Account balance being in deficit over the same period.

**6.1.6** Where a Head of Department wishes to apply for a supplementary estimate a report shall be made, following consultation with the Chief Financial Officer, to Management Team. Management Team will then make a recommendation where appropriate to the Corporate Finance & Governance Portfolio Holder or Cabinet. Cabinet must recommend to Council any request for supplementary estimates that requires the approval of Council.

## **6.2 Negative Supplementary Estimates**

A negative supplementary estimate (having the effect of reducing an otherwise available budget) with the specific purpose of reducing the Council's net expenditure may be approved based on the same limits set out in 6.1.5 above.

## **6.3 Virements**

**6.3.1** A virement, unlike a supplementary estimate, will not increase the Council's overall net expenditure. However to ensure that the budget, functions and service levels approved by Council are not compromised virements can only be undertaken under the following conditions.



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**6.3.2** Virement rules do not need to be followed in the following circumstances but a scheme will still need to be approved including agreement of what is to be delivered:-

- (a) Where expenditure is being funded entirely by income received under section 106 agreements and that income has been received and accounted for in the current financial year and where that expenditure is in accordance with the terms of the section 106 agreement. In these circumstances the Chief Financial Officer must agree the expenditure, and the financing.
- (b) For expenditure where the Council receives full funding from an external source for a specified project and there are no additional revenue costs to the Council in either the current financial year or future financial years. In these circumstances the Chief Financial Officer must agree the expenditure and the financing.

If there are additional costs to the Council then that expenditure must be financed in accordance with these Financial Procedure Rules.

- (c) Subject to agreement of the Chief Financial Officer:
  - (i) Where a decision requires an amendment to the budgetary analysis within the Council's financial information system in order that the Council's accounts can properly reflect the financial transactions of that decision.
  - (ii) Where the budgetary analysis within the Council's financial information system need to be amended in order to comply with required accounting standards or to properly reflect the costs of an activity or function.
  - (iii) If not subject to any separate delegation, where a budget has been established via an earlier decision or Cabinet/Full Council, any subsequent itemised expenditure from that budget (rather than a transfer between budget headings which would require a virement), in such circumstances, an Officer decision will be required following consultation with the relevant Portfolio Holder.

**6.3.3** Virement rules are required to be followed in the following circumstances:

- (a) The transfer of a sum from one estimate to another, which can be within or between services.
- (b) Where an expenditure estimate is to be increased and offset by a known increase in an income estimate including fees and charges.

- (c) Where reduced income is to be offset by a sustainable reduction in expenditure.

**6.3.4** The conditions for a virement are:

All virements must be made within the terms and limits prescribed in these Financial Procedure Rules (see 6.3.5):

- (a) Subject to (b) to (h) below a Head of Department can apply a virement provided that the Department is able to ensure that:
  - (i) Overall, the minimum agreed level of service would still be provided
  - (ii) The net service cost will be contained within the overall approved budget and the Council's overall costs will not be increased
  - (iii) There are no additional budgetary implications in future years
  - (iv) The service being provided is within the Council's approved policy
- (b) All virements between **revenue and capital budgets** must be as set out below.
- (c) A virement cannot be made where the proposed expenditure or reduction in income relates to an item which has **previously been considered** and been rejected by the Council, the Cabinet or responsible Portfolio Holder.
- (d) Where a virement is proposed and the expenditure is in respect of an item not provided for within an approved budgeted service level, but can be met by fortuitous savings (such as from a tendering process or against growth items identified in the Financial Strategy/Forecast), such expenditure if in excess of £15,000 shall be referred to Cabinet for approval. This excludes savings from minor restructuring. In respect of savings against Financial Strategy/Forecast Growth Items, the limit will apply to the aggregated value of all requested virements from such budgets.
- (e) Cabinet must approve all virements, which are likely to result in a further and/or additional burden on future years' Council Tax and revenues.

- (f) Where significant virements are necessary, it is NOT acceptable to disaggregate the total sum into a number of smaller virements so that these smaller sums fall within the rules/limits of these Financial Procedure Rules. The limits will apply to the aggregated value of the transfer to or from any one estimate.

6.3.5 Virement Limits and Approvals

(a) **Transfers within an approved estimate**

Virement Value	Approval Required
No limit	The Head of Department providing the expenditure does not impose an ongoing commitment on the Council, which has not already been approved and budgeted for.

(b) **General Fund Revenue and HRA**

Virement Value	Approval Required
Not more than £15,000.	The Head of Department
Over £15,000 but not more than £30,000	The Head of Department, together with the approval of the Management Team together with the Portfolio Holder(s) and/or Committee(s)
Over £30,000 but not more than £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) <b>and</b> the Corporate Finance & Governance Portfolio Holder
Over £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) <b>and</b> Cabinet

(c) **General Fund Capital Schemes**

<b>Virement Value</b>	<b>Approval Required</b>
Not more than £15,000.	The Head of Department
Over £15,000 but not more than £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) <b>and</b> the Corporate Finance & Governance Portfolio Holder
Over £50,000	The Head of Department, with the approval of the Management Team, the responsible Portfolio Holder(s) and/or Committee(s) <b>and</b> Cabinet

(d) **Housing Revenue Account Capital Schemes**

<b>Virement Value</b>	<b>Approval Required</b>
Not more than £100,000	Corporate Director (Operations & Delivery), provided that the total Capital Scheme allocation as approved is not exceeded and provided the Chief Financial Officer advises that no increase to Housing Revenue Account costs results.
Over £100,000	Housing Portfolio Holder provided the total HIP allocation as approved is not exceeded and provided the Assistant Director (Finance & IT) advises that no increase to Housing Revenue Account and General Fund revenue costs results.

(e) **Between Capital and Revenue**

<b>Virement Value</b>	<b>Approval Required</b>
<b>(i)</b> Increase in an approved Capital budget.	<p>a) When the increase in the cost of the project is a supplementary estimate and must be agreed in accordance with these Financial Procedure Rules.</p> <p>b) When the financing from an existing revenue budget is a virement between the revenue financing of capital expenditure budget and the revenue budget which is being reduced and normal virement rules as set out in these Financial Procedure Rules are to apply. In these circumstances the Assistant Director (Finance &amp; IT) must agree the expenditure and the financing.</p>
<b>(ii)</b> Increase in an approved capital budget which is to be financed by an increase in borrowing or use of capital receipts	This is a supplementary estimate, which must be agreed in accordance with these Financial Procedure Rules.
<b>(iii)</b> Increase in an approved revenue budget, which is to be financed by a reduction in an approved capital budget which results in a reduction in the revenue financing of capital expenditure sufficient to meet the entire increase in the revenue budget	This is a virement between the revenue financing of capital expenditure budget and the revenue budget, which is being increased, and normal virement rules as set out in these Financial Procedure Rules are to apply. In these circumstances the Assistant Director (Finance & IT) must agree the expenditure and the financing.

If none of the above circumstances set out in <b>(i), (ii) and (iii)</b> above apply.	A supplementary estimate or virement must be obtained in accordance with these Financial Procedure Rules.
Irrespective of the above in all cases where there is an increase to the General Fund revenue costs	A supplementary estimate or virement must be obtained in accordance with these Financial Procedure Rules.

- 6.4 The Chief Financial Officer shall ensure that all virements comply with these Financial Procedure Rules and will amend the Council’s financial information systems as appropriate.
- 6.5 The Chief Financial Officer will maintain an up-to-date record of all virements and supplementary estimates that have been actioned to date and make this available to the Corporate Finance & Governance Portfolio Holder on request.

**7. FINANCIAL MANAGEMENT OF BUDGETS DURING THE YEAR**

- 7.1 Once the Council has approved the budget, officers to whom authority has been delegated, may incur expenditure within the amount provided under each head of estimate as varied by any supplementary estimate or virement approved under these Financial Procedure Rules provided that:
  - (a) The matter is not one to which the Cabinet has attached a reservation
  - (b) Where appropriate any necessary external consent has been obtained
  - (c) Procurement Procedure Rules have been complied with
- 7.2 Responsibility for the control of capital and revenue expenditure (including the award of grants) and income for a service or function shall rest with the appropriate Head of Department. Each Head of Department shall notify the Chief Financial Officer of any actual or prospective overspending of expenditure or shortfall in income in excess of the budget which cannot be met by virement as set out in these Financial Procedure Rules.
- 7.3 The Chief Financial Officer has a duty under Section 28 of the Local Government Act 2003 to monitor budgets and the underlying assumptions formulating the budget throughout the year. Where an approved expenditure budget is likely to be overspent or there is likely to be a shortfall in an income budget the Chief Financial Officer shall ensure that corrective action is taken. In exercising this duty the Chief Financial Officer may, irrespective of section 6.2 above, examine all budgets and seek explanations

from Heads of Department as necessary. The Head of Department shall provide the Chief Financial Officer with any information and explanation requested.

- 7.4 The Chief Financial Officer shall provide Heads of Department with adequate and timely accounting information and reports, in appropriate detail, to enable those Heads of Department to carry out budgetary control of their budgets.
- 7.5 The Chief Financial Officer shall determine the level and detail at which budgets and financial management reports are maintained for use by officers and for reporting to Members.
- 7.6 The Chief Financial Officer shall in conjunction with the Management Team ensure that Portfolio Holders, Cabinet and the Council are fully informed of the Council's financial position.

## 8. FINAL ACCOUNTS, OUT-TURN REPORT AND STATEMENT OF ACCOUNTS

- 8.1 An Outturn Report for the previous financial year will be prepared by the Chief Financial Officer, in respect of revenue and capital items (including Housing), in accordance with the timetable necessary to produce the Statement of Accounts by the statutory deadline. The outturn report will seek the approval of the Corporate Finance & Governance Portfolio Holder for:
  - 8.1.1 Any transfers to and from reserves
  - 8.1.2 The funding treatment of capital expenditure and the treatment of capital receipts.
  - 8.1.3 The carrying forward of capital slippage and revenue commitment sums in respect of any unspent monies in one year to a later year or to reserves
  - 8.1.4 The carrying forward of overspent sums in respect of Capital projects and revenue budgets that will be financed by a reduction in the following years budget in respect of any overspent monies in one year to a later year or to be financed from reserves.
- 8.2 The Chief Financial Officer will prepare the Council's Statement of Accounts in accordance with statutory requirements and will incorporate all decisions approved by the Corporate Finance & Governance Portfolio Holder in 8.1 above. Any further decisions that may be required following the outturn process, such as allocating money brought forward from the prior year will be made by Cabinet at a subsequent meeting.
- 8.3 All Heads of Department shall supply the Chief Financial Officer with accurate and timely information as may be required for the compilation of the final and other accounts and matters incidental thereto to enable the above requirements to be

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achieved. That information shall be supplied in a format specified by the Chief Financial Officer.

**9. FINANCIAL ADMINISTRATION**

**9.1 Internal Audit**

**9.1.1** The designated Head of Internal Audit is the Council's officer for the purposes of compliance with statutory Section 151 responsibilities in respect of Internal Audit along with any other relevant regulations or standards.

**9.1.2** The designated Head of Internal Audit shall ensure that independent internal audit staff examine and audit the expenditure, income and property and other assets of the Council and its officers. To enable the designated Head of Internal Audit to achieve this, Internal Audit shall have the right of entry to all establishments and the right to examine all records, cash, stores and other properties belonging to or appertaining to the finances of the Council and to carry out such checks and require and receive such explanations as considered necessary.

**9.1.3** Following completion of each audit a written report shall be submitted to the Head of Department, who must determine and notify the designated Head of Internal Audit of the action they propose to take.

**9.1.4** In planning the conduct of these audits, the designated Head of Internal Audit shall arrange, as far as possible, for the views of the Head of Department to be taken into account.

**9.1.5** Heads of Department **must** report **any financial irregularity or suspected irregularity**, including those affecting cash, stores or property to the designated Head of Internal Audit **immediately the irregularity or suspected irregularity becomes known**.

**9.2 Accounting Arrangements**

**9.2.1** The Chief Financial Officer shall determine, provide, and manage the Council's Financial Information System.

**9.2.2** All financial returns to Government, the Council's Statement of Accounts and all budget monitoring reports will be prepared from the information in the Council's Financial Information System or such other system that the Chief Financial Officer has agreed can be used to provide the information.



- 9.2.3** Each Head of Department is required to obtain the approval of the Chief Financial Officer for all accounting procedures and records that are proposed. This shall include any computer-based systems that store, utilise or process **any** financial information and must be capable of interfacing and/or integrating with the Council's Financial Information System.
- 9.2.4** All Heads of Department shall ensure that their approved accounting procedures and records are reconciled to the Council's Financial Information System and that adequate records are maintained to demonstrate this.
- 9.2.5** In this respect each Head of Department shall provide the Chief Financial Officer with details of all authorised officers within their department, setting out matters that those officers are authorised to deal with and, where appropriate, the financial limits and shall notify the Chief Financial Officer of those officers' appointment or departure.
- 9.2.6** Any officer having in their charge money, equipment, stores or other property for which they are accountable to the Council shall take all reasonable precautions for its safe custody and proper use.

**9.3 Responsibilities for Computer System Legislation**

- 9.3.1** All Heads of Department who services utilise computer installations and software shall be responsible for the security and privacy of all data held in those installations, and for ensuring compliance with all relevant legislation in respect of the licensing and use of that software. This includes taking all necessary action to safeguard against computer viruses or other form of data corruption.
- 9.3.2** Heads of Department shall also ensure that all necessary registrations are made under the Data Protection Act and that those registrations are regularly monitored and updated where necessary. Staff shall also be reminded of their individual responsibilities under this Act and the Freedom of Information Act.
- 9.3.3** Similarly, each Head of Department shall ensure that all other relevant computer system legislation is complied with, in particular copyright and patents acts concerning the use of software, scanners and other electronic storage means, for which the appropriate licence fee has not been paid, and the Computer Misuse Act.

**9.4 Orders for Works, Goods and Services**

- 9.4.1** All official orders and associated documents shall bear the name and logo of Tendring District Council and shall be in an agreed standard format and

produced by the approved ordering system. They shall be issued only by Heads of Department and their authorised staff and be in accordance with these Financial Procedure Rules and the Procurement Procedure Rules.

**9.5 Certificate and Payment of Invoices**

**9.5.1** Invoices for payment by the Council shall not be made out by any officer of the Council, other than in circumstances agreed in advance with the Chief Financial Officer, nor shall an Officer add any item to an invoice rendered by a supplier.

**9.5.2** The reasons for any amendment to an invoice shall be recorded and retained in a safe and secure manner in accordance with the directions issued by the Chief Financial Officer.

**9.5.3** Any Head of Department who issues an order shall be responsible for ensuring the examination, verification and certification of the relevant invoice(s), except in circumstances as determined by the Chief Financial Officer, and for correctly and promptly recording on the Council's approved ordering system the receipt of goods, works or services.

**9.5.4** Before certifying an invoice the certifying officer must be satisfied, within the tolerances specified by the Chief Financial Officer, that:

- (a) The invoice confirms with the official order
- (b) That the goods have been received, examined and approved for quality and quantity and that any services have been rendered or any work done satisfactorily and receipted on the approved ordering system
- (c) That the prices charged are correct
- (d) That the expenditure is, to the best of the certifying officer's belief, lawful and has been duly authorised.
- (e) That no invoice for the same goods, service or work has previously been passed for payment
- (f) The invoice is arithmetically correct
- (g) That the expenditure has been properly analysed to the appropriate accounting code(s)
- (h) That the allocation of VAT has been correctly made

- (i) That the expenditure can be financed from within the appropriate approved estimate.

Where a grant has been approved, the above should be followed by the certifying officer where appropriate.

- 9.5.5** It is the responsibility of a Head of Department receiving goods or materials to ensure that appropriate entries are made in inventories, stores or other records.
- 9.5.6** Wherever practicable the respective duties of ordering, receiving and certifying the relevant invoices for payment of goods, services or work shall not be performed by one and the same officer, and in no case shall an invoice be finally certified for payment by an officer assuming personal control over the goods, works or services to which the invoice relates.
- 9.5.7** The Chief Financial Officer shall examine, so far as he/she considers necessary, invoices passed for payment and shall make all such enquiries and receive all such enquiries and receive all such information and explanations, as shall be required.
- 9.5.8** All Heads of Department shall ensure that the Council's prompt payment of invoices are met.

## **9.6 Income**

- 9.6.1** All arrangements for the collection of monies due to the Council and the issuing of debtor invoices shall be as directed by the Chief Financial Officer.
- 9.6.2** All monies received shall, without delay, either be paid in as instructed by the Chief Financial Officer or be banked in the Council's name to the bank accounts designated by the Chief Financial Officer.
- 9.6.3** Heads of Department must ensure that, where an invoice is to be issued for sums due to the Council that the invoice is issued immediately the sum due is known. Where a large sum is likely to be due, interim invoices are to be issued.
- 9.6.4** Where an invoice is to be issued the Head of Department issuing the invoice must ensure that the invoice is correct and the sum demanded is properly due to the Council and meets all the legal obligations especially those required to enforce non-payment if such circumstances arise.
- 9.6.5** Each officer who banks money to the credit of the Council's bank account shall enter on the paying-in slip, and on the duplicate thereof, particulars of the payment. In the case of each cheque paid in he/she shall record:-

- (a) The amount of the cheque
- (b) A reference which shall connect the cheque with the debt or debts in respect of which it was received.

**9.6.6** Where monies are due to the Council under contracts, leases, tenancy agreements, agreement for the sale of property and any other agreements entered into which involve the receipt of money by the Council, the Head of Department shall provide the Chief Financial Officer with all relevant particulars, as soon as possible.

**9.6.7** Each Head of Department who, under arrangements approved by the Chief Financial Officer, is responsible for the collection or recovery of sums due to the Council shall take prompt action to expedite collection. This action shall comply with the Council's debt recovery procedures as determined and directed by the Chief Financial Officer.

**9.6.8** Official receipt forms, receipt books, tickets and other documents of a similar nature used to collect revenue due to the Council shall be in a format approved by the Chief Financial Officer.

**9.6.9** Heads of Department stocking such stationery shall ensure that appropriate security is maintained at all times.

**9.6.10** Each officer authorised to receive monies on behalf of the Council shall do so only on official receipt forms, tickets or other documents of a similar nature as approved by the Chief Financial Officer, except in respect of payments by cheque or drafts where no receipt is requested, or for payments received by the Assistant Director (Governance) for which he/she is satisfied it is appropriate to give a receipt otherwise than in the official form.

**9.6.11** Money received shall not be used to cash personal or any other cheques whatsoever except where, due to exceptional circumstances, the Chief Financial Officer has given prior approval.

**9.6.12** Where payment is made to the Council by debit or credit card the Head of Department accepting payment must ensure that all sums due to the Council by the Credit Card or Debit Card Company is received in full by the Council and reconciled.

**9.7 Remuneration, Gratuities and Allowances**

**9.7.1** Heads of Department shall provide the Chief Financial Officer with all appropriate details to enable the payment of all salaries, wages, compensation, gratuities and other emoluments in respect of employees or former employees.

- (a) The Assistant Director (Partnerships) must notify the Chief Financial Officer immediately of all appointments, dismissals, resignations, suspensions, transfers and changes in the rate of remuneration of employees (other than normal increments).
- (b) Heads of Department shall notify the Chief Financial Officer of all overtime or additional hours worked for which payment is to be made and all absences through sickness or other absences affecting the payment due to employees.
- (c) Claims for travelling and subsistence allowances shall be assessed monthly by Heads of Department who, within four working days of the end of each month shall notify the Chief Financial Officer of amounts due to be paid.
- (d) Each Head of Department shall notify the Chief Financial Officer of the names and specimen signatures of those officers who are authorised to certify salaries, wages and allowances documents.

**9.7.2** The Chief Financial Officer shall examine, so far as he/she considers necessary all claims for payment of salaries, wages or allowances and subject to that examination, shall make all such payments which are certified by the appropriate Head of Department or other officer authorised by them in writing or in an electronic format approved by the Chief Financial Officer.

**9.8 Petty Cash and Other Imprest Accounts**

**9.8.1** The Chief Financial Officer shall make imprest advances to Heads of Department, where appropriate, for the purpose of defraying petty expenses. The use of any alternative means of meeting expenses shall be agreed, in advance, with the Chief Financial Officer.

**9.8.2** The amount of each advance and the system of operation shall be determined in consultation between the Head of Department and the Chief Financial Officer.

**9.8.3** Whenever an Officer leaves the employment of the Council or ceases to be entitled to hold an imprest advance he/she shall account to the Chief Financial Officer for the unexpended balance of their advance.

**9.8.4** All procurements made using a petty cash imprest shall be in accordance with the Procurement Procedure Rules. All procurements must be evidenced by the production, and retention with the petty cash imprest records, of a valid receipt. Where VAT is to be accounted for a valid VAT receipt shall be obtained.

**10. WRITE-OFFS OF SUMS DUE TO THE COUNCIL**

- 10.1** The Council has a duty to collect all sums due to it. However there are occasions when it is not possible or cost effective to proceed with the recovery of the debt. In these cases the debt needs to be written off and the following conditions, delegations, and limits apply. The Head of Department must be reasonably satisfied that recovery action/options have been “exhausted” before proceeding to seek a write off of any debt.
- 10.2** Where a debt has been raised in error or is incorrectly calculated then the debt should either be reduced or cancelled by the issue of a credit note or similar reversal of the original charge. Such reversal must be authorised by a responsible officer other than the one who raised the original debt.
- 10.3** All write-offs of debt must be set against the budget to which the original income was credited or an appropriate provision if one has been made.
- 10.4** If the write-off will result in that income budget not being achieved the Head of Department must advise the Chief Financial Officer immediately.
- 10.5** That part of any debt written off, for which provision has been made in the Council’s bad debt provision at the end of the previous financial year can be written off without further action as set out in 5.4.4(b) of these Financial Procedure Rules.
- 10.6** If the Chief Financial Officer advises that the whole or part of the debt was not included in the Council’s bad debt provision at the end of the previous financial year then the Head of Department must apply a virement or seek a supplementary estimate in accordance with section 5 of these Financial Procedure Rules to finance that part of the debt not provided for within that provision.
- 10.7** The authority to write-off debts is delegated by the Council as follows:

<b>Item for Potential Write-off</b>	<b>Authority to Write-off Delegated To</b>
Debt due to the Council where the amount owing is a Council Tax, NNDR or Housing Benefit and Rents debt which is either:-  1. A ceased account and the debt is equal to the amount charged as summons costs making the debt uneconomical to collect, or	

<p>2. Not a ceased amount but the amount owed is less than the cost of second class postage</p> <p>3. The debt due to the Council is less than £10</p> <p><i>In respect of 1. and 3. above, there should be no other "live" Council Tax or NNDR account in the name of the specific debtor.</i></p>	<p>The relevant Corporate Director</p>
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<b>Item for Potential Write-off</b>	<b>Authority to Write-off Delegated To</b>
<p>Specific debtors where:-</p> <p>(a) There is a personal bankruptcy, company insolvency, Individual/Company Voluntary Arrangement or a Debt Relief Order.</p> <p>(b) The Recovery Enforcement Agents has been unable to obtain payment and has returned the debt as "nulla bona" and insufficient assets to satisfy the debt.</p> <p>(c) The company has been struck off by Companies House.</p> <p>(d) The death of a debtor who dies insolvent and the claim against the estate has been made.</p> <p>(e) Death of a debtor who has died with no executor with whom to register a claim.</p> <p>(f) Council Tax Debts – Removal outside the jurisdiction of the Magistrates Courts of the debtor.</p> <p>(g) All other debts – Removal outside the UK of the debtor.</p> <p>(h) The remission of debts by the Magistrates or other court.</p>	<p>The Chief Financial Officer on receipt of a written report from the appropriate Head(s) of Department.</p> <p>Where joint/several liability applies to any of the criteria listed, the criteria applied must be applicable to all parties.</p>

(i) The committal to prison of the debtor in respect of the non-payment of the debt or associated debt.	
(j) The abscondment of a debtor where a tracing or other appropriate agency has failed to make a trace.	

<b>ANY OTHER DEBTS</b>	
Individual debts not exceeding £5,000	The Chief Financial Officer on receipt of a written report from the appropriate Head(s) of Department which should where reasonably practical identify if the specific debtor is still receiving goods or services from the Council.
Individual debts exceeding £5,000 but below £25,000	The Finance and Corporate Resources Portfolio Holder on receipt of a written joint report from the appropriate Head(s) of Department, the Chief Financial Officer and the Assistant Director (Governance) which should include a recommendation as to how the write-off will be financed and where reasonably practicable identify if the specific debtor is still receiving goods or services from the Council.
Individual debts of £25,000 and above	The Cabinet on receipt of a written joint report from the appropriate Head(s) of Department, the Chief Financial Officer and the Assistant Director (Governance) should also include a recommendation as to how the write-off will be financed and should where reasonably practical identify if the specific debtor is still receiving goods or services from the Council.

**11. INSURANCE**

**11.1** The Chief Financial Officer shall be responsible for the provision of the Council's insurances. This shall include authority to accept annual renewal terms from the appointed insurer subject to such terms being within the terms of the original contract and the approved budget available. Heads of Department shall be responsible for



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providing the Chief Financial Officer with all necessary information to do this in the most effective manner.

- 11.2** Each Head of Department shall give prompt notification to the Chief Financial Officer of all new risks, properties or vehicles which require to be insured, and of any alterations affecting existing insurances, indicating the amount or variation in cover required.
- 11.3** Each Head of Department shall also notify the Chief Financial Officer of any other risk which in their opinion should be included within the Council's insurance cover arrangements.
- 11.4** Heads of Department shall, as soon as they become aware of such circumstances, notify the Chief Financial Officer in writing of any claim or likely claim. Heads of Department shall **not** admit any liability or take any action that may commit the Council or its insurers in respect of any potential or actual claim.
- 11.5** Each Head of Department shall consult the Assistant Director (Governance) regarding the terms of any indemnity which the Council has been requested to give before authority is sought for the giving of the indemnity.
- 11.6** Each Head of Department shall consult the Chief Financial Officer on any case where, in their opinion, the nature or situation of any equipment, stores or other property for which they are accountable to the Council requires the provision of special security arrangements.
- 11.7** The Chief Financial Officer shall, periodically, provide Heads of Department with full details of the risks insured by the Council so that they may check and review the items for which they are responsible.

## **12. INVENTORIES STOCKS AND STORES**

- 12.1** Inventories shall be properly maintained by Heads of Department to record appropriate items in the possession of the Council regardless of whether an item has been leased, rented, borrowed or purchased.
  - 12.1.1** All assets of the Council shall be recorded in inventories or registers maintained by Heads of Department in a form approved by the Chief Financial Officer and in accordance with procedures agreed with him/her.
  - 12.1.2** Separate registers will be maintained by the Assistant Director (Building & Public Realm) for Land and Buildings and the Assistant Director (Finance & IT) for IT equipment.
  - 12.1.3** The level or value of items to be listed shall be determined by each Head of Department in consultation with the Chief Financial Officer.

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- 12.1.4** Heads of Department are responsible for checking and certifying of inventories within their control at least once a year to ensure the security of all property under the Council's control.
- 12.1.5** The Council's property, equipment and other facilities shall not be removed other than in the ordinary course of the Council's business nor shall they be used for any other purpose. Heads of Department should ensure that where equipment is removed from Council premises to be used for work purposes elsewhere, including officers' homes that an appropriate record is maintained of such movements and that adequate insurance cover exists (including whilst in transit).
- 12.1.6** Heads of Department shall ensure that a record is maintained, in a format approved by the Chief Financial Officer, of all items written off. This record shall detail date, description, reason and include appropriate authorisation.
- 12.2** Where appropriate a Head of Department shall notify the Chief Financial Officer of any acquisition, disposal or change of an item, which is included in the Authority's balance sheet or where changes in the Council's insurance cover may be necessary.
- 12.3 Stocks and Stores**
- 12.3.1** All records of stocks and stores shall be in a form approved by the Chief Financial Officer.
- 12.3.2** Procedures for the receipt and issue of stocks and stores shall be approved by the Chief Financial Officer.
- 12.3.3** Each Head of Department shall be responsible for the custody and physical control of all stocks and stores under their control.
- 12.3.4** Each Head of Department shall arrange for continuous stock checking of stocks in hand and shall ensure that all items of stock are checked at least once in every financial year.
- 12.3.5** Each Head of Department shall furnish the Chief Financial Officer with a certificate showing the value of stocks and stores in hand under their control as at 31 March in each year in accordance with the timetable necessary to produce the Statement of Accounts by the statutory deadline.

**12.3.6** The Corporate Directors or Assistant Directors (where relevant) are authorised to approve the write-off of an inventory item and adjusting stocks and stores accounts up to £250 in respect of any one item or £1,250 per annum in consultation with the Chief Financial Officer.

**12.4 Disposal of Stocks and Stores and items owned or managed by the Council**

**12.4.1** Where a Head of Department identifies items of equipment on an inventory or stocks or stores no longer required and they are satisfied that the items/stores are of no use to other Heads of Department then they shall arrange for disposal which can include being offered for sale to staff/Council Members where the sale is based on the highest price offered.

Only then:

If the total estimated value of the items is in excess of £1,000 then disposal shall be by means of a public auction or open tender

**12.4.2** Whatever method of disposal is applied, where the value of the items to be disposed of needs to be written from the accounts, the cost shall be allocated to a separately identifiable write-off code provided by the Chief Financial Officer.

**12.4.3** Income from any disposal shall similarly be identifiable using a code provided by the Chief Financial Officer

**12.5** Where there is a net cost of disposal the Head of Department must finance the cost by virement or supplementary estimate in accordance with these Financial Procedure Rules.

**13. BANKING ARRANGEMENTS**

**13.1** Only the Chief Financial Officer shall be authorised to open bank accounts for monies under the control of the Council and these shall be in the name of the Council. Day to day operation of bank accounts shall be determined by the Chief Financial Officer.

**13.2** The conduct of the Council's business with their bankers shall be made by, or under arrangements approved by the Chief Financial Officer.

**13.2.1** A bank account or accounts shall be maintained by the Council into which all monies received by the Council shall be paid. Withdrawals from these accounts and transfers from one account to another shall be made only on the authority of the Chief Financial Officer or other officer authorised by him/her in writing.

**13.2.2** Payments made on the Council's behalf shall be made using BACS transfers wherever possible or otherwise by crossed cheques. The Chief Financial Officer, or other officer authorised by him/her in writing, may make alternative arrangements where they consider it necessary or appropriate, in the interest of the Council.

**13.2.3** Manual signatures of the Chief Financial Officer, or other officers authorised by him/her in writing, shall be required in accordance with arrangements determined by the Chief Financial Officer.

#### **14. INVESTMENTS, LOANS AND BORROWING**

**14.1** The Council has adopted the CIPFA Treasury Management in Public Services Code of Practice (The Code) 2009.

**14.1.1** All securities in the name of the Council and the title deeds of all property in the ownership of the Council shall be held in the custody of the Property Service.

**14.1.2** This Council will create and maintain, as the cornerstones for effective treasury management:-

- (a) A treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities, including also non-treasury investments.
- (b) Treasury Management Practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.

**14.1.3** The contents of the policy statement and TMPs will follow the recommendations contained in the Code and Guidance from central Government, subject only to amendment where necessary to reflect the particular circumstances of this Council. Such amendments will not result in the Council materially deviating from the Code's key principles.

**14.2** The Council will receive reports on its treasury management policies, practices and activities as follows:-

**14.2.1** Each year in accordance with statutory requirements and before the start of the forthcoming year Full Council will, following a recommendation by Cabinet and consideration by the Resources and Services Overview and Scrutiny Committee, approve an Annual Treasury Strategy for the forthcoming year. The Annual Treasury Strategy will include an investment strategy, a capital strategy and a borrowing strategy. The investment strategy will include a schedule of those instruments the Council will consider using for investments

in the forthcoming financial year. The borrowing strategy will include a statement of the anticipated borrowing requirement for the following financial year. The Annual Treasury Strategy will also include the prudential and treasury indicators for the forthcoming year and at least the subsequent 2 years. The Capital Strategy will include a projection of external debt and use of internal borrowing to support capital expenditure, provision for the repayment of debt over the life of the debt, the authorised limit and operational boundary for the following year and the approach to treasury management, including due processes, due diligence and defining the Council's risk appetite.

- 14.2.2** The Annual Treasury Strategy will be reviewed as necessary throughout the year. As a minimum the Chief Financial Officer will review the strategy as at the end of September and report the findings of that review to Cabinet, which may at its discretion, forward the report to Council.
- 14.2.3** The Chief Financial Officer will report to Cabinet at the earliest opportunity after 31 March in any year on the Council's Treasury Management performance and activities in the preceding financial year.
- 14.2.4** The Chief Financial Officer will report during the course of the financial year on the Council's Treasury Management performance and activities. Such reports to be considered by Cabinet and the Resources and Services Overview and Scrutiny Committee.
- 14.3** The Council's Chief Financial Officer shall, in accordance with the Council's TMPs and the Council's approved Annual Treasury Strategy, be authorised to:
- (a) Borrow sums of money
  - (b) Reschedule or restructure the existing debt portfolio
  - (c) Invest surplus funds
  - (d) Determine those counterparties and countries that meet the Council's credit rating criteria
  - (e) Determine the money brokers the Council will use for temporary borrowing and investment and long term borrowing
  - (f) Amend as necessary and in accordance with the Council's Treasury Management practices those schedules set out therein
  - (g) Take urgent action to safeguard the Council's investments, including where necessary temporarily breaching the conditions set out in the TMPs. The Corporate Finance & Governance Portfolio Holder is to be advised of the action taken as soon as practicable.
- 14.4** The execution and administration of treasury management decisions is the responsibility of the Chief Financial Officer, who will act in accordance with the Council's policy statement and TMPs and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.

**15. LAND AND PROPERTY TRANSACTIONS**

- 15.1** All land and property transactions must be undertaken in accordance with the Council's **Property Dealing Procedure**.
- 15.2** Any amendments to the **Property Dealing Procedure** will be made by Full Council as constitutional amendments.

**16. EXTERNAL FUNDING**

- 16.1** External funding refers to applications to external organisations, including Government departments and agencies for the funding of expenditure. The expenditure may be for the Council's own services or for those services provided in partnership with other public bodies, voluntary sector bodies or private sector organisations.
- 16.2** In any partnership arrangement the Chief Financial Officer must ensure that there are adequate controls in place in respect of the Council's own financial liabilities to the partnership and that there are adequate controls in place for the partnership itself.
- 16.3** Any application for external funding to finance or contribute to the financing of a function, investment or activity for which the Council is either the sole provider or is the accountable body must be approved by Management Team following consultation with the Chief Financial Officer to ensure the external funding being sought is in accordance with the Council's priorities and not an additional impact on resources. Such approval will be recorded with an Officer Decision.
- 16.4** When making application for payment of funds from the body awarding the grant it is a statutory obligation that all figures in the claim be supported by adequate, and comprehensive working papers. All such working papers will be in a format and detail as determined by the Chief Financial Officer.

**17. PROCEEDS OF CRIME ACT 2002 (ANTI-MONEY LAUNDERING)**

- 17.1** The Proceeds of Crime Act 2002 sets out some of the obligations placed on individuals and organisations to report known or suspected money-laundering activities. This means that both the Council itself and individual officers within the Council are bound by this Act. All employees of the Council must report any suspicions. Failure to do so is a criminal offence.
- 17.2** It is the Council's policy to do all it can to prevent, wherever possible, the Council and its staff being exposed to money laundering, to identify the potential areas where it may occur and to comply with all legal and regulatory requirements especially with regard to reporting of actual or suspected cases.
- 17.3** All Heads of Department will ensure that all staff for whom they are responsible and who are involved in financial transactions are aware of the Council's and their own obligations in respect of money laundering.

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**17.4** The Chief Financial Officer, or officer(s) nominated by him/her will be responsible for anti-money laundering measures within the Council to ensure compliance with the Proceeds of Crime Act 2002 and fulfil the Council's policy in respect of money laundering.

**17.5** The following instances could be an attempt at money laundering and should raise suspicions and must be reported to the Chief Financial Officer or nominated officer(s).

The Chief Financial Officer will determine the limits and procedures to be followed in the event of these activities arising.

**17.5.1** Payment in cash of an unusually large sum of money.

**17.5.2** Payment in cash of a sum in excess of the amount owing; particularly if a double payment is made, followed by a request for a non-cash refund.

**17.5.3** The use of Trusts or offshore funds for handling proceeds or settlement of a transaction should be questioned.

**17.5.4** Care should be exercised and further enquiries may be needed in the following instances:

- (a) A third party intermediary becomes involved in a transaction
- (b) The identify of a third party is hard to establish or is undisclosed
- (c) A party is evasive as to the source or destiny of funds
- (d) A third party uses a vehicle company and the ultimate ownership is concealed or difficult to establish.

## **18. STATE AID**

**18.1** State aid rules are in place to protect the European Community free market by ensuring state resources are not used to distort competition or give an unfair advantage. State aid rules can apply to voluntary and non-profit making organisations. State aid has four characteristics:

- (a) It is granted by the State or through state resources (this includes local authorities);
- (b) It favours certain undertakings, or the production of certain goods (this can include voluntary and non-profit making organisations if they are engaged in economic activity);
- (c) It distorts or threatens to distort competition;
- (d) It affects trade between member states.

If all four characteristics are present the state aid is prohibited, subject to certain

exemptions. State aid takes many forms, it relates to a financial advantage of any kind.

- 18.2** Any support given to organisations must not breach state aid rules.
- 18.3** Issues regarding state aid must be checked prior to the award of support and advice sought as appropriate (guidance is available from the Department for Business Innovation and Skills).
- 18.4** Where state aid rules are considered to apply, appropriate approvals must be obtained from the European Commission prior to the award of the support unless specific regulations do not require advance approval, for example they are covered by a block exemption (limits apply) or the de minimis regulations.
- 18.5** If state aid is being given under a block exemption the aid must comply with every condition stated in the block exemption regulation and appropriate procedures for notifying the Commission of the award must be followed.
- 18.6** If state aid is being given under the de minimis regulations all relevant procedures must be followed, in particular:
- (a) the recipient must be informed of the de minimis nature of the grant
  - (b) full information must be obtained from the recipient about other de minimis aid received during the previous three years
  - (c) new de minimis aid must only be granted if it will not raise the total aid received in the relevant period of three years over the de minimis limit applicable at the time
  - (d) all records of de minimis aid paid must be kept in accordance with the regulations and for the relevant minimum time period.
- 18.7** All aid given must be notified to the Chief Financial Officer and financial records must separately identify any aid given.



**PROPERTY DEALING PROCEDURE**

**1. NEGOTIATION OF PROPERTY DEALS**

- 1.1** Property Deal means the acquisition or disposal by the Council of any interest in land, including freehold, leasehold, by way of tenancy, any rent review, lease variation, lease renewal or any other dealing or proposed dealing with an interest in land or licence to use land.
- 1.2** Members must not engage in negotiations of any kind relating to any Property Deal or proposed Property Deal.
- 1.3** Every request to the Council from any party for a deal within this procedure shall be referred to the Assistant Director (Building & Public Realm), or, by the Chief Executive, to a Corporate Director.
- 1.4** Every Property Deal shall be conducted in accordance with the Property Dealing Procedure, excluding the sale of dwellings under right-to-buy legislation, the sale and purchase of Shared Equity and DIYSO properties, and arrangements for utilities to be provided on Council owned land.
- 1.5** Any Property Deal will be dealt with by appropriate officers in accordance with the Property Office Procedures to be agreed from time to time by the Assistant Director (Building & Public Realm) with the Council's Section 151 and Monitoring Officers. The Property Office Procedures set out the practice to be followed by any Officer acting under delegated powers.

**2. PROPERTY OFFICE PROCEDURE**

- 2.1** "Property Office Procedure" means all applicable steps of the Property Office Procedure at the time being.
- 2.2** The Assistant Director (Building & Public Realm) will ensure that adequate office procedures are agreed with the Section 151 and Monitoring Officers and maintained. The Property Office Procedures must include appropriate controls on the conduct of Property Deals. The Property Office Procedure should contain other procedures and guidance on the management of property by other parts of the Council.
- 2.3** In relation to those instances where a Portfolio Holder is the decision maker, the Assistant Director (Building & Public Realm), in consultation with the Monitoring Officer, the Section 151 Officer and the Head of Internal Audit, will ensure that there is an adequate set of formal principles for decision making in place and maintained. This set of principles should be set out in:-

the Property Strategy; or

the Housing Strategy; or

the Housing Acquisitions Policy; or

the Commercial Investment Property Policy.

It should also enable the Portfolio Holder to demonstrate that they have assessed the deal against the principles. Where the deal is not in accord with the Property Strategy or the Housing Strategy or the Housing Acquisitions Strategy or the Commercial Investment Property Policy, as appropriate, it will be referred to the Cabinet for determination.

**3. VALUATIONS**

**3.1** In relation to Property Deals and to any appropriation of land the Assistant Director (Building & Public Realm) will carry out or obtain appropriate valuations proportionate to the open market value or rental:

<u>Type of Deal</u>	<u>Valuation(s) Required</u>
Licences and Tenancies at Will	Officer valuation to be prepared and retained
Leases, interests and freeholds up to £300,000	One full external professional valuation to be obtained
Leases, interests and freeholds at £300,000 or over	A full external professional valuation to be obtained, plus a further valuation at the Property & Project Manager’s discretion, if deemed necessary in their professional opinion.
As above but in any ransom or other circumstances where the seeking of two valuations would be impractical in the opinion of the Assistant Director (Building & Public Realm)	One full external professional valuation to be obtained. Assistant Director (Building & Public Realm) to include reasoning in the report for decision.

**3.2** The decision to initiate the Property Dealing Procedure will be taken by the Corporate Director (Operations and Delivery). In those circumstances where the decision involves a Freehold Acquisition or Disposal that decision to initiate the Property Dealing Procedure will be taken by the Corporate Director in consultation with the relevant Portfolio Holder.

**APPENDIX A**  
**Levels of Decision Making**

<b>Right or interest to be granted/acquired</b>	<b>Officer who is Head of Department or Corporate Director</b>	<b>Officer who is Corporate Director (Operations &amp; Delivery)</b>	<b>Relevant Portfolio Holder (See Note below)</b>	<b>Cabinet</b>
<b>Reporting</b>	<b>Formal Record of Officer Decision to be completed and published*</b>		<b>Formal Report and Record of Decision required to be completed and published</b>	
1. A licence or access agreement for 12 months or less				
2. a licence or access agreement for more than 12 months or any tenancy at will				
3. Tenancies for less than seven years excluding security of tenure				
4. Renewal, assignment or surrender of tenancies as 3 above				
5. Tenancies for seven years or more or tenancies not excluding security of tenure				
6. Renewal, assignment or surrender of tenancies as 5 above				
7. Grant, acquisition or release of Rights of Way, Easements or other permanent rights				
8. Freehold property interest less than £100,000				
9. Freehold property interest is £100,000 or over but less than £300,000				
10. Freehold property interest is £300,000 or over				
11. Decision whether to continue to pursue a transaction as an appropriate course of				

**Part 5 – RULES OF PROCEDURE**

**PROPERTY DEALING PROCEDURE**

action, including under the General Disposal Consent Order, and in situations where the agreed price differs substantially from the valuation advice received				
12. Any disposal of open space where objections have been received				
13. New Lease to residential tenant under Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993 (commonly referred to as a lease extension)				
14. Extensions to Shared Equity Leases (Leasehold Reform Act 1967 – Deed of Variation to alter rent to a modern rent with no premium paid)				

\*Subject to access to information rules.

Note: The relevant Portfolio Holder will be determined by whether the property sites, or will sit, within the General Fund or the Housing Revenue Account.

Greyed box indicates level of decision making.

## SECTION 1 – SECTION SUMMARY

### 1.0 Procurement rules are set out across the following sections:

- SECTION 1 - General Requirements
- SECTION 2 – Exemptions from Procedure Rules
- SECTION 3 – The Procurement Framework and Central Purchasing
- SECTION 4 – Quotation and Tenders
  - 4.1 General Requirements
  - 4.2 Quotations (*Procurement up to £50,000*)
  - 4.3 Tenders (*Procurement over £50,000*)
    - 4.3.1 Selecting Suppliers
    - 4.3.2 Open Competitive Tenders
    - 4.3.3 Selective Tenders
    - 4.3.4 The number of suppliers invited to tender
    - 4.3.5 Going out to Tender
    - 4.3.6 Receipt of Tenders
    - 4.3.7 Opening of Tenders
    - 4.3.8 Acceptance of Tenders
    - 4.3.9 Tender Evaluation Panel
- SECTION 5 – Other Procurement Rules
- SECTION 6 – Official Order Rules

## SECTION 1 – GENERAL REQUIREMENTS

### 1.1 Before undertaking any procurement, Departments should satisfy themselves that:

- The works, goods or services are required and a need can be demonstrated
- There are no reasonable alternatives e.g. sharing or utilising spare capacity/inventories elsewhere within the Council
- They are aware of the current statutory contract value thresholds in accordance with the Public Contract Regulations 2015 (as amended) as shown on PING
- Where relevant, they have considered the requirements of the Public Services (Social Value) Act 2012 and have recorded/evidenced the outcomes against the associated requirements:-
  - ❖ *how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area*
  - ❖ *how, in conducting the process of procurement, it might act with a view to securing that improvement.*

Procurement Procedure Rules apply to the procurement of ALL goods, works or services. The Council's approved computerised ordering system will be used for all procurement, except where otherwise detailed within these Procurement Procedure Rules.

Procurement can only take place where budgetary provision is available to fund the goods, works or services required (see Financial Procedure Rules).

Where the Council contracts with a third party (who is not an officer of this Council) to supervise a contract on its behalf, the Corporate Director/Head of Department entering into that contract will be required to ensure that the third party complies with the requirements of these Procurement Procedure Rules.

Where the Council enters into or administers a contract either as an agent, or on behalf of another public body the Council's Procurement Procedure Rules will apply unless written instructions have been received by the Council to the contrary.

These Procurement Procedure Rules will not apply where statute or subordinate legislation prescribes otherwise.

Delegation relating to the engagement of consultancy services is set out separately within the "Common to all Portfolio Holders" section of the Constitution. However, for completeness, the Corporate Directors/Heads of Department only have delegated authority for the engagement of consultancy services or specialist professional advice up to the value of £15,000 and procurement rules must be followed. For schemes where fees are expected to exceed £15,000 consultation with the Portfolio Holder or Committee Chairman is required.

Procurement within the Council is co-ordinated by Governance Services and in all cases where catalogues or other pre-negotiated approaches are not used, then consultation with Governance Services should be undertaken to identify potential alternative options or additional procurement opportunities.

Where building works form part of the procurement, then it is expected that Departments will discuss their requirements with the internal surveyor as appropriate.

## **1.2 Use of Local Suppliers**

All Procurement should be in line with the Council's Procurement Strategy which includes the recognition of the use of local suppliers and providing a fair basis for them to compete for the provision of goods, works and services required by the Council.

## SECTION 2 – EXEMPTION FROM PROCUREMENT RULES

**2.1** The Corporate Directors/Heads of Department shall be exempt from the need to obtain competitive quotations/prices where any of the following circumstances apply:-

- (a) The goods or services are procured from an in-house service
- (b) The goods are proprietary items of which there is only one supplier, or are sold by all suppliers at a fixed price
- (c) The matter is one of urgency as determined by the appropriate Corporate Director/Head of Department following consultation with the responsible Portfolio Holder or the Leader of the Council.
- (d) The contractor or supplier is specified for works to this Council for which an external client is making payment.
- (e) Where the work is of a specialist nature and the Corporate Director/Head of Department can demonstrate that it is not possible to obtain more than one quotation or tender.
- (f) For the engagement of Counsel by the Assistant Director (Governance).
- (g) Where a partnership arrangement has been entered into with a contractor or a supplier as a result of competitive tendering, and the proposed procurement is within or related to the documented scope of that partnership arrangement. In such cases the Corporate Director/Head of Department must be able to demonstrate that the proposed procurement through such a partnership arrangement is advantageous to the Council (e.g. continuity of service or product supply, or extension of existing arrangements). The documentation will be issued will take the form of a contract variation as determined in the partnership contract and/or via the Official Ordering rules or if appropriate the documentation to be issued will be as required by the Procurement Procedure Rules for the value of the procurement. *(EU limits must be observed to ensure no thresholds are exceeded)*.
- (h) For purchases from petty cash.

In all cases where an exemption is applied the Corporate Director/Head of Department shall maintain a record to evidence this.

**2.2** Further exemption from Procurement Procedure Rules may be sought where a Head of Department can demonstrate that exemption is justified by special circumstances.

- (a) Where no specific exemption is provided above:
  - Where the value of the contract or procurement is estimated to be less than £50,000 exemption may be granted by the Chief Financial Officer in consultation with the

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Corporate Finance & Governance Portfolio Holder. The procuring service must publish an Officer Decision to record this.

- Where the total value of the contract, or procurement, is estimated to be between £50,000 and £250,000 the Corporate Finance & Governance Portfolio Holder may, on the recommendation of the Chief Financial Officer, grant exemption. In such cases a formal Portfolio Holder decision must be made.
- Where the total contract, or procurement, is estimated to exceed £250,000, the Cabinet, or a Committee may, on the recommendation of the Chief Financial Officer, grant exemption. In such cases a record of the exemption must be made in the minutes of the Cabinet, or Committee.

### **2.3 Alternative/Indirect Service Delivery**

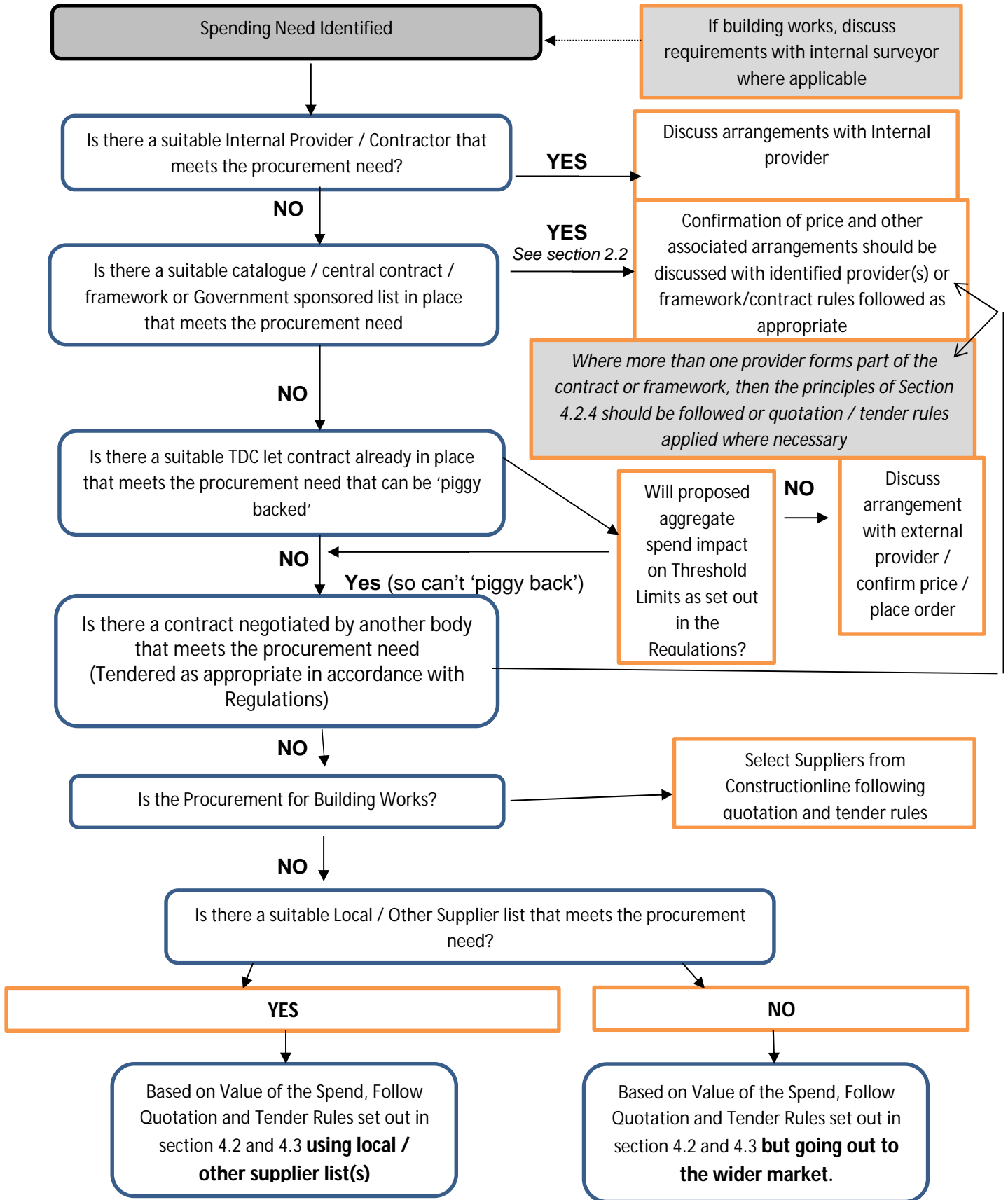
Where the Council seeks to implement alternative delivery options, for whole or parts of services, those procurements will be achieved in accordance with the Council's Procurement Strategy. Such procurements may not necessarily be able to be undertaken within Procurement Procedure Rules given the number and combination of different procurement routes and processes that may be applicable, but must:-

- (i) Comply with all relevant statutory provisions including European Procurement Directives.
- (ii) Follow a documented process determined by the responsible Corporate Director/Head of Department, the Chief Financial Officer and the Assistant Director (Governance), and agreed by Management Team and the Cabinet, in advance of the process. The process must demonstrate compliance with the principals of openness and accountability.
- (iii) Be capable of providing clear probity trails, particularly in respect of the opening and evaluation of any associated bids or tenders.
- (iv) Comply with any Procurement Procedure Rules that remain applicable, or offer alternatives that meet the requirements of the Assistant Director (Governance).

## **SECTION 3 – THE PROCUREMENT FRAMEWORK**

- 3.1** All procurement is expected to following the following process/framework taking each step in sequence noting that the overall value of procurement is not the initial consideration. Governance Services should be consulted at the relevant stage of the process as necessary.





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### 3.2 Central Purchasing

This includes:

- Central Contracts – Where the Council has taken advantage of negotiating with an external provider for the supply of goods, works or services.
- Partnership Agreements – Where the Council has decided to enter into partnership agreements either directly with other public bodies, or as part of a consortium of public bodies, for the procurement of goods, works or services.

*Procurement Procedure Rules will be followed to select the supplier/contractor to be used for central contracts or if this Council is undertaking the tendering process to select the supplier/contractor under a partnership approach.*

- Specialist call-off contracts - Where contracts have been tendered/negotiated by other public bodies and include the option for other Public Bodies to participate.

If the use of any such contract is not considered to offer Value for Money, then the relevant Corporate Director/Head of Department should consult with the Chief Financial Officer and the Assistant Director (Governance) in order to identify the most appropriate/advantageous procurement route.

## SECTION 4 – QUOTATIONS AND TENDERS

### 4.1 General Requirements

- (a) Disaggregation of any procurement, in order to apply a lower level to each of the parts is not permitted.
- (b) Where any procurement spans a number of periods, or years, the total estimated cost will be the cumulative total of all periods, or years covered.
- (c) The use of electronic “portals” or other electronic means must be used to widely advertise goods, works or services required by the Council where appropriate, to ensure equal opportunity between local and non-local suppliers.
- (d) Procurement **up to £50,000** (excluding VAT) – **Quotation Rules Apply (Section 4.2).**
- (e) Procurement **over £50,000** (excluding VAT) – **Tender Rules Apply (Section 4.3).**

### 4.2 **QUOTATIONS** (Procurement up to £50,000 excluding VAT)

***After the appropriate procurement route has been identified by following the framework set out in 3.1 above and if appropriate:***

#### 4.2.1 Procurement up to £10,000 (excluding VAT)

Where procurement is less than £2,500 then value for money should be demonstrated by obtaining two prices where possible.

Where procurement is in excess of £2,500, the seeking of two prices would be expected, with evidence retained by the department.

**4.2.2 Procurement over £10,000, but not expected to exceed £50,000 (excluding VAT)**

A minimum of three quotations should be sought by the department in addition to the production of a documented specification to include:

- (i) Identification of the procurement of goods, works or services required.
- (ii) Identification of any periods over which the goods, works or services are to be provided. In appropriate cases, provide for the payment of liquidated damages by a contractor where there is a failure to complete the contract within the period(s) specified.
- (iii) Provision for the retention of stated sums/percentages and the retention period to be applied where appropriate.
- (iv) Provision for the contractor to provide a performance bond, or parent company guarantee where appropriate.
- (v) Unless an exemption is obtained from the Assistant Director (Governance), the Council Standard Contract for Services must be used when seeking quotations for £25,000 and above. When seeking an exemption, the relevant department will identify why any additional or replacement terms and conditions are necessary for the service being sought.
- (vi) All contractors or suppliers asked to provide a quotation must be advised that the quotation must be sent to a specified e-mail address, and that quotations e-mailed to any other Council e-mail address will be disqualified.

**4.2.3 All quotations shall be sought electronically:**

The responsible Corporate Director/Head of Department shall arrange for a secure e-mail address to be set up on the Council's e-mail system. Access to this e-mail address must not be available until the time of quotation opening. Access to the secure e-mail address shall be controlled by an independent senior member of staff not involved with the project or tender process or a member of the Procurement Service.

Where the lowest quotation received exceeds £50,000 (excluding VAT), Tender Rules shall be followed from that stage as if tenders had been sought.

If the value of the lowest quotation received exceeds the limit of the quotation category applied, then the Corporate Director/Head of Department must seek sufficient further quotations applicable to the level of the value of that lowest quotation.

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**4.2.4** The Corporate Director/Head of Department is under no obligation to accept any of the quotations. However where they are prepared to accept a quotation, the most financially advantageous quotation should be accepted unless other factors such as quality, local supply, performance and deliverability are also considered as part of the selection process. In accordance with the Council's overall requirements to demonstrate Value for Money. Evidence is expected to be retained and recorded in an Officer Decision to support such decisions where procurement exceeds £10,000.

**4.3** **TENDERS** (*Procurement greater than £50,000 excluding VAT*)

***After the appropriate procurement route has been identified by following the framework set out in 3.1 above and if appropriate:***

**4.3.1** **Selection of Suppliers**

**Tenders Over Statutory Thresholds**

(a) Where the total estimated value of a proposed contract over its term is expected to exceed the appropriate current Public Contract Regulations 2015 (as amended) thresholds, such regulations will take precedence over these tender procedures.

**Tenders Under Statutory Thresholds**

The appropriate Corporate Director/Head of Department will determine whether to use **Open Competitive Tendering** or **Selective Tendering** as set out separately below.

**4.3.2** **Open Competitive Tenders**

A notice inviting tenders shall be prepared which should:-

- (i) Set out the nature and purpose of the contract and specify that expressions of interest are sought and set out details of where further information/tender documents can be obtained.
- (ii) Be advertised via the Council's electronic "portal" that is open to all potential suppliers or alternatively in at least one newspaper or journal circulating among suppliers/contractors who undertake such contracts. The notice period to be allowed for potential suppliers to request additional tender documentation should be determined by the Corporate Director/Head of Department.

Following the expiry of the notice period, Tender documentation will be sent to interested parties in accordance with **SECTION 4.3.5**.

**4.3.3** **Selective Tendering**

Where the Council can access a central/framework arrangement, government sponsored list or a contract negotiated by another public body as set out in **SECTION 3.2** above, more than one supplier may be eligible under such arrangements. If this is the case, tender documentation

should be sent to the relevant parties in accordance with **SECTION 4.3.5**. In all other cases the following process should be undertaken:

A public notice shall:-

1. Specify details of the goods, works or services to be tendered.
2. Specify a time limit determined by the Corporate Director/Head of Department during which time potential suppliers can request that they be considered for inclusion in the associated tender process.
3. After expiry of the period specified in the public notice, the responsible Corporate Director/Head of Department will undertake an evaluation of the suppliers. This evaluation may be subject to Tender Evaluation Panel review.
4. The responsible Corporate Director/Head of Department, and where appropriate the Tender Evaluation Panel, will in consultation with the appropriate Portfolio Holder or Chairman of the relevant Committee select those contractors suitable and capable to tender for the proposed contract.

Following the conclusion of the evaluation process, Tender documentation will be sent to interested parties in accordance with **SECTION 4.3.5** below:

#### **4.3.4 The Number of Suppliers Invited to Tender**

Invitations to tender shall ensure fair competition and where possible include a mix of local and non-local suppliers and shall be sent to:-

Not less than 4 contractors, with the maximum number as determined by the relevant Corporate Director/Head of Department. (Where less than 4 suitable contractors have been identified from the selection process, then all shall be invited to tender).

#### **4.3.5 Going out to Tender**

##### ***General Rules***

Tenders must:

- (i) Specify the goods, works or services to be supplied, contract value, any discounts or other deductions that may apply, the period(s) during which the contract is to be performed and any other relevant terms and conditions that the responsible Corporate Director/Head of Department considers necessary.
- (ii) In appropriate cases, provide for the retention of stated sums/percentages and the retention period to be applied.
- (iii) In appropriate cases, provided for the payment of liquidated damages by a contractor where there is a failure to complete the contract within the period(s) specified.

- (iv) In appropriate cases, and at the discretion of the responsible Corporate Director/Head of Department, make provision requiring the contractor to provide a performance bond and/or a parent company guarantee.
- (v) Identify the basis on which the submitted tenders will be evaluated. (Where the evaluation is other than a straightforward financial evaluation based upon lowest submitted price, the proposed evaluation process must be submitted to the Tender Evaluation Panel for agreement before tenders are sought).
- (vi) Tenders are required to be submitted on a form of tender prepared by, or agreed by, the Council which shall include a statement that the Council will not be bound to consider or accept any tender.
- (vii) Specify the closing date and time by which tenders must be received.
- (viii) Where the Corporate Director/Head of Department considers that the Council may benefit from the use of post tender negotiation, that officer shall ensure that such intention is included in the documentation submitted to tenderers and before seeking tenders agree a suitable procedure with the Tender Evaluation Panel.
- (ix) Specify social value considerations as appropriate.
- (x) Unless an exemption is obtained from the Assistant Director (Governance), the Council's Standard Contract for Services must be used. The draft contract must be supplied as part of the tender exercise. When seeking an exemption, the relevant department will identify why an alternative model contract is required or any additional or replacement terms and conditions are necessary for the service being sought.

#### **4.3.6 Receipt of Tenders**

Unless determined otherwise by the responsible Corporate Director/Head of Department in consultation with Governance Services, all tenders should be requested to be returned electronically by e-mail. However, whatever form of tender response is implemented, all tenders must be submitted in the same manner.

The responsible Corporate Director/Head of Department shall arrange for a secure e-mail address to be set up on the Council's e-mail system. Access to this e-mail system must not be available until the time of tender opening. Access to the secure e-mail address shall be controlled by an independent senior member of staff not involved with the project or tender process or a member of the Procurement Service.

Tender documentation sent to potential providers must state that tenders must only be sent to the specified e-mail address and that tenders e-mailed to any other Council e-mail address or after the closing date and time will be disqualified.

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As soon as practical after the closing date and time, a designated Governance Services Officer will arrange for the formal recording of the tenders submitted.

*In exceptional circumstances where hard copy tenders are requested, then the email requirement above is replaced by the tender returns being addressed to the Head of Democratic Services & Elections or their designated Officer. Prospective tenderers must be instructed to clearly mark envelopes with the fact that it is a tender submission and that it is not to be opened until after the relevant closing date and time.*

#### **4.3.7 Opening of Tenders**

##### **(a)(1) Electronic Submission of Tenders**

Having obtained the necessary password from IT Services, the Head of Democratic Services & Elections (or other officer to whom they have delegated the responsibility) will access the appropriate electronic tenderbox and open, in turn, the Form of Tender document from the Tenderers contained therein. That Officer will also check the “Spam” email box to ensure that no Tendered documents have been misidentified.

That Officer will check that the Tenderer’s email was received before the deadline for receipt of tenders and will record the name of the Tenderer and the amount of the tender. The Officer will then forward, by email, the Tenderer’s email to the relevant Officer who is overseeing the tender process. The Officer will then repeat the process for all of the Tenderers. The Officer will then close down the electronic tenderbox and will then email the password to the relevant officer who is overseeing the tender process so that they can conduct their own checks et cetera.

The Officer will also complete the Record of Tenders Received (containing the information set out in (b) below) and they will also email that document to the relevant Officer who is overseeing the tender process for their records et cetera.

##### **(a)(2) Hard Copy Submission of Tenders**

As soon as possible after the relevant closing date and time the hard copy tenders received will be opened in the presence of:-

- (i) The Head of Democratic Services & Elections or his nominated representative;
- (ii) The responsible Corporate Director/Head of Department or their nominated representative; and
- (iii) At their sole discretion as to the necessity of their attendance, the Council’s Head of Internal Audit, or their nominated representative.

The officer referred to in (i) above will open the tender envelope, locate the form of Tender, record the name of the tenderer and the amount of the tender and initial against the amount on the Form of Tender. The Officer referred to in (ii) above will also similarly append their initials. That process will then be repeated for all of the Tender Envelopes.

The Officer referred to in (i) above will also complete the Record of Tenders Received (containing the information set out in (b) below) and they will produce two copies. One will be kept by that Officer and the second will be handed to the Officer referred to in (ii) above for the records et cetera.

- (b) The Head of Democratic Services & Elections, or other officer to whom they have delegated that responsibility, shall prepare and maintain a register of tenders received and shall record in that register the following particulars:-
- (i) The title and closing date and time for receipt of tenders
  - (ii) The date upon which the tender was received (if it was a hard copy tender)
  - (iii) Where a tender is received after the closing time on the closing date and is considered or accepted, the reason(s) why it was considered or accepted
  - (iv) The name of the tenderer and the amount of the tender
  - (v) The date upon which the tenders received were opened
  - (vi) All officers present at the opening of hard copy tenders shall immediately sign against the relevant Record of Tenders Received document as evidence of such tenders having been opened in their presence.
  - (vii) The signature of the officer to whom the tenders were handed after opening
- (c) Any tender received after the closing time and date shall, unless Procurement Procedure Rule 4.3.7 (b)(iii) applies thereto, be returned by the Head of Democratic Services & Elections, or their delegated Officer promptly to the tenderer. The tender may be opened to ascertain the name and postal or email address of the tenderer, but no details of the tender shall be disclosed to any other party whether internal or external.

#### **4.3.8 Acceptance of Tenders**

- (a) Unless the requirements of Procurement Procedure Rules 4.3.5 (v) have been applied, the most financially advantageous tender to the Council shall be accepted by the Corporate Director/Head of Department (in consultation with the relevant Portfolio Holder or Committee Chairman).
- (b) Where Procurement Procedure Rule 4.3.5 (v) applies, the tenders must be evaluated in accordance with the agreed evaluation process/criteria, and evidence retained to demonstrate this. The tender identified as most advantageous to the Council shall be accepted by the Corporate Director/Head of Department (in consultation with the relevant Portfolio Holder or Committee Chairman).
- (c) In those instances when only one Tender has been submitted but it is deemed advantageous to the Council following the evaluation process, that tender shall be accepted by the Corporate Director/Head of Department, in consultation with the Corporate Finance & Governance Portfolio Holder and the relevant Portfolio Holder or Committee Chairman.



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The Corporate Director/Head of Department will produce a detailed report explaining why this course of action has been pursued and the said report will be circulated, alongside the Officer decision, to all members of the Council.

#### **4.3.9 Tender Evaluation Consultation**

The Council will undertake a Tender Evaluation Consultation of all tenders, estimated at over £50,000 (excluding VAT) being sought. This should include, where appropriate, any proposed method of evaluation of expressions of interest from prospective contractors. The Consultation will be led by the relevant Corporate Director or their designated officer and will include officers determined by them along with a senior officer from the department letting the contract.

The Tender Evaluation Consultation shall also have the right to include technical assistance/expertise from other departments as considered necessary.

Officer decisions recording the award of contract should include reference to the views/comments identified by the consultees.

An external representation can be accepted into any Tender Evaluation Consultation. In all cases where an external representative is included, they must be asked to declare any potential interests.

### **SECTION 5 – OTHER PROCUREMENT RULES**

#### **5.1 Contract Clauses**

Unless an exemption is obtained from the Assistant Director (Governance), the Council's Standard Contract for Services must be used. The draft Contract must be supplied as part of the tender exercise. When seeking an exemption, the relevant department will identify why an alternative model contract is required or any additional or replacement terms and conditions are necessary for the service being sought. In all cases, contracts must follow any guidance issued by the Monitoring Officer in this regard.

#### **5.2 Authorised Officers**

- (a) Each Corporate Director/Head of Department is responsible for advising the Chief Financial Officer, in writing, of those officers who are empowered to enter into contracts, or procurement, on behalf of the Council, and any maximum limits on the values concerned.
- (b) Each Corporate Director/Head of Department shall advise the Chief Financial Officer in writing, immediately of any changes to those officers so empowered, or their limits.
- (c) Only officers so empowered will be provided with a level of access to any computerised procurement system operated by, or on behalf of, the Council, that enables them to authorise official orders within the limits set.

#### **5.3 Nominated Sub-Contractors and Suppliers**

- (a) Competitive quotations/tenders shall be sought for the execution of works or for the supply of goods or materials by a nominated subcontractor in accordance with these Procurement Procedure Rules, unless it is considered impractical to do so.

- (b) Where the estimated value of the subcontract does not exceed £50,000 the responsible Corporate Director/Head of Department shall determine whether it is practical to obtain quotations.
- (c) Where the estimated value of the subcontract exceeds £50,000 and the responsible Corporate Director/Head of Department considers the obtaining of tenders to be impractical the approval of the Leader of the Council, relevant Portfolio Holder or Committee Chairman for the proposed course of action shall be sought.
- (d) The invitation to a subcontractor to quote/tender shall include an undertaking that, if selected, the subcontractor will enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in respect of goods, works or services included in their subcontract.

**SECTION 6 – OFFICIAL ORDER RULES**

**6.1 General Requirements**

**ALL** goods, works or services must be subject to an official order unless an exemption is provided in Section 6.2 below.

- (a) All orders shall be placed using the Council’s approved ordering system, unless exempted elsewhere in these Procurement Procedure Rules.
- (b) The format of the Council’s approved standard official purchase orders (either hard copy or electronic) and any standard terms and conditions to be applied to each order shall be determined by the Assistant Director (Finance & IT) and the Assistant Director (Governance).
- (c) In the event of the need to issue a variation to an order, this will be by issue of a further order and must clearly identify the order number of the order to be varied.
- (d) All orders must:-

(i)	Bear the name and logo of Tendring District Council
(ii)	Clearly identify goods, works, or services to be procured, and all other detail as is mandatory on the Council’s approved ordering computer system.
(iii)	Contain any other detail, terms and conditions that are applicable to that order. For the engagement of consultancy services or specialist professional advice this must include a condition relating to professional indemnity insurance.
(iv)	Have a value or an accurate estimate of the value of the goods, works, or services entered into on the Council’s electronic ordering system.
(v)	Must be authorised by an officer duly authorised by the responsible Corporate Director/Head of Department.

## 6.2 Exemptions from Official Order Rules

Verbal orders, orders that are not accompanied by an official order or not exempt as set out below should only be made in special/exceptional circumstances and only after consultation with the Assistant Director (Finance & IT) or their designated officer. In the case of emergencies where an officer needs to take appropriate action to protect the Council's position or its assets then a verbal order can be made but the Assistant Director (Finance & IT) must be informed as soon as practical thereafter.

Where verbal orders are made they should be followed up by entering the necessary details on the Council's ordering system in accordance with 6.1 above as soon as possible.

A Corporate Director/Head of Department shall be exempt from the need to raise an official order in the following circumstances:-

(a)	For cash purchases using the Council's Petty Cash system, where ordering using the approved computer system is considered not to be practical. A maximum limit of £50 (excluding VAT) is applicable to each procurement made using the Council's Petty Cash system.
(b)	For the periodic payment of rent and National Non Domestic Rates.
(c)	For the periodic payment of former public utility supplies.
(d)	Where the nature of the goods, works or service requires an appropriate standard form of written contract.
(e)	For contract variations where a written contract requires a form of written contract variation, that is not in the format of the Council's standard official order.
(f)	For HRA assets where orders for goods, works or services are required to be raised through the Council's authorised Housing Management computer system.
(g)	For the engagement of Counsel by the Assistant Director (Governance).
(h)	Where the Chief Financial Officer has agreed the use of purchase cards or where one of the Council's credit cards is used. However, whenever possible, an Official Order should be raised as soon as possible for audit and recording purposes after the transaction has been made using a corporate credit card.
(i)	Any other circumstances as agreed, in advance of the procurement, by the Assistant Director (Finance & IT).
(j)	Where goods or services are procured in-house.

**OFFICER EMPLOYMENT PROCEDURE RULES**

**1. RECRUITMENT AND APPOINTMENT**

- (a) Declarations
  - (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or Officer of the Council; or of the partner of such persons (or if they are related in any other way to such persons).
  - (ii) No candidate so related to a Councillor or Officer will be appointed without the authority of the Head of Paid Service or an Officer nominated by him.
  - (iii) A candidate who fails to disclose a relationship as set out in (i) above shall be disqualified for the appointment and, if appointed, shall be liable to dismissal without notice.
- (b) Seeking support for appointment
  - (i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillors for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
  - (ii) Subject to paragraph (iii), no Councillors will seek support for any person for any appointment with the Council.
  - (iii) Nothing in paragraphs (i) and (ii) above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

**2. RECRUITMENT OF HEAD OF PAID SERVICE AND CHIEF OFFICERS**

Where the Council proposes to appoint a Senior Officer and it is not proposed that the appointment will be made exclusively from among its existing Officers, the Council will:

- (a) Draw up a statement specifying:
  - (i) the duties of the Officer concerned
  - (ii) Any qualifications or qualities to be sought in the person to be appointed

- (b) Make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it.
- (c) Make arrangements for a copy of the statement mentioned in (a) above to be sent to the person on request.

**3. APPOINTMENT OF HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCIAL OFFICER**

- (a) Full Council will approve the appointment of the Head of Paid Service, Monitoring Officer and Chief Financial Officer following the recommendation of the Human Resources Sub-Committee of the Council. That Sub-Committee must include at least one member of the Cabinet.
- (b) Full Council may approve and make the appointment of the Head of Paid Service, Monitoring Officer and Chief Financial Officer only where no valid well-founded objection has been made by any member of the Cabinet.

**4. APPOINTMENT OF CHIEF OFFICERS AND DEPUTY CHIEF OFFICERS**

- (a) The Human Resources Sub-Committee of the Council will appoint the, Corporate Directors, Assistant Directors, other such Senior Officers as defined in Paragraph 3 of Part II of Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2011 (as amended) and any assistant to political groups. That Sub-Committee must include at least one member of the Cabinet.
- (b) An offer of appointment to the post of a Corporate Director, or Assistant Director or other such Senior Officer post as defined above, shall be made only where no valid well-founded objection from any member of the Cabinet has been received.
- (c) A central record of posts covered by Paragraph 3 of Part II of Schedule 2 of the Local Authorities (Standing Orders) Regulations 2001 (as amended) will be held in Human Resources.

**5. NOTIFICATION OF APPOINTMENTS**

- (a) No offer of an appointment shall be made to the Head of Paid Service, Monitoring Officer, Chief Financial Officer, Corporate Director, Assistant Director or other such Senior Officer post as defined above until:
  - (i) The Chairman of the Human Resources Sub-Committee (on behalf of the Sub-Committee) has notified the Assistant Director (Partnerships) of the name of the

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person to whom the post is to be offered and any other matter relevant to the appointment.

- (ii) The Assistant Director (Partnerships) has notified every member of the Cabinet of the name and of the person to whom the post is to be offered and any other matter relevant to the appointment.
- (b) The Leader of the Council may object, on behalf of the Cabinet, to the appointment within 3 working days of the issue of the notice in (a) above.
- (c) An offer of appointment may be made if:
  - (i) The Leader of the Council has notified the Assistant Director (Partnerships) within 3 working days that neither they, nor any other Member of the Cabinet has any objection to the making of the appointment.
  - (ii) The has notified the Sub-Committee that they have not received any objection with Assistant Director (Partnerships) in the period specified in (b) above.
  - (iii) The Sub-Committee is satisfied that any objection received from the Leader within that period is neither material nor well-founded.

**6. OTHER APPOINTMENTS**

The appointment of Officers below the Head of Service is the responsibility of the Head of Paid Service or their nominee, and may not be made by Councillors.

**7. DISCIPLINARY ACTION**

- (a) The Human Resources Sub-Committee shall deal with disciplinary issues in connection with the Authority's Senior Officers as defined in this Constitution, and any assistant to political groups and resolve any action which it considers appropriate. With regards to disciplinary issues in connection with the Authority's statutory officers, the Committee can only resolve action short of dismissal. In instances where its recommendation is to dismiss any statutory officer it must adhere to the processes set out in these procedure rules and the full Human Resources and Council Tax Committee together with the Independent Persons must refer its recommendation to Full Council.
- (b) The Council's statutory officers are those defined as Head of the Authority's Paid Service, Chief Financial Officer and Monitoring Officer.

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**8. DISCIPLINARY ACTION IN CONNECTION WITH OTHER OFFICERS**

Members will not be involved in the disciplinary action or dismissal against any other officer. The Council's disciplinary, capability and related procedures, as adopted from time to time will apply.

**9. DISCIPLINARY CASES INVOLVING THE COUNCIL'S STATUTORY OFFICERS: HEAD OF PAID SERVICE, THE CHIEF FINANCIAL OFFICER AND THE MONITORING OFFICER:**

2.1 *In the following paragraphs-*

- (a) *"the 2011 Act" means the Localism Act 2011;*
- (b) *"chief finance officer", "disciplinary action", "head of the authority's paid service" and "monitoring officer" have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;*
- (c) *"independent person" means a person appointed under section 28(7) of the 2011 Act;*
- (d) *"local government elector" means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;*
- (e) *"the Panel" means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;*
- (f) *"relevant meeting" means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and*
- (g) *"relevant officer" means the chief finance officer, head of the authority's paid service or monitoring officer, as the case may be.*

2.2 *A relevant officer may not be dismissed by the authority unless the procedure set out in the following paragraphs is complied with.*

2.3 *The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.*

2.4 *In paragraph 2.3 "relevant independent person" means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.*

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2.5 *Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 2.3 in accordance with the following priority order-*

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;*
- (b) any other relevant independent person who has been appointed by the authority;*
- (c) a relevant independent person who has been appointed by another authority or authorities.*

2.6 *The authority is not required to appoint more than two relevant independent persons in accordance with paragraph 2.5 but may do so.*

2.7 *The authority must appoint any Panel at least 20 working days before the relevant meeting.*

2.8 *Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular-*

- (a) any advice, views or recommendations of the Panel;*
- (b) the conclusions of any investigation into the proposed dismissal; and*
- (c) any representations from the relevant officer.*

2.9 *Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as an independent person under the 2011 Act.*



## SCHEME FOR DEALING WITH PETITIONS

Tendring District Council recognises the importance of petitions as a means of engaging with local communities, enabling the public to air concerns, and as a mechanism for generating service improvements. These pages set out what a petition is, how the public can submit a petition, how it will be dealt with and what the Council can do to respond to the issues raised.

### What Constitutes a Petition

Any communication which is signed by, or sent to the Council by **30 or more** people who live, work or study within Tendring shall be treated as a petition provided that such communication has a clear message or instruction upon which it would wish the Council to act.

Any communication which is signed by, or sent to the Council by **less** than 30 of the people who live, work or study within Tendring shall not be treated as a petition but, where it relates to a matter for which the Council has responsibility for, it shall be forwarded to the appropriate officer of the Council to acknowledge and advise what action, if any, will be taken.

### Signatory Eligibility

The Council is keen to receive feedback from all residents, visitors and from people working or studying in the Tendring area, through various communication channels. However, only those people who are either (a) permanent residents of Tendring or (b) non-residents who can be clearly identified as either working or studying in Tendring can trigger a formal petition response.

There is no legislation supporting the minimum age requirement for a person to initiate or support a petition. Accordingly, children and young people have the ability to submit a petition as it is deemed they have the same rights and opportunity for their voices to be heard as well as adults. However, it is recognised that in practice, a teacher or parent would oversee the submission of a petition from school children where such children are under 16 years of age.

Whilst the Council welcomes petitions as a means of highlighting concerns within a local area, the lead petitioner has a responsibility to ensure that any petition submitted is done so under the principle of good faith and be decent, honest and respectful.

### Information to be included

Any petition submitted must contain the following:

- A clear and concise statement covering the subject of the petition, the area to which the petition relates and what action the petitioners want the Council to take;

- The contact details for the petition organiser (lead petitioner) so the Council knows who to contact (where the lead petitioner is not identified, the Council shall correspond with the person named first on the petition);
- The name, full address, postcode and signature of any person supporting a traditional paper petition (address details will be checked). Such a petition must be accompanied by a dated covering letter that identifies the key information outlined in this procedure about the purpose of the petition, what action is called for and contact details for the lead petitioner;
- The name, postcode and email address for those persons who sign up to an electronic petition or e-petition; and
- The date the petition was submitted.

Any petition that does not comply with the above requirements will be deemed invalid.

#### 1. How to Submit a Petition to the Council

Petitions can be submitted to the Council in the following ways:

- E-petition – The petition must be submitted via the Petitions function on the Council's website ([www.tendringdc.gov.uk](http://www.tendringdc.gov.uk)). Where no end date to an e-petition is specified, the Council shall set this at 93 days from the date of receipt of the petition.
- Paper petitions must be sent to The Committee Services Manager, Tendring District Council, Democratic Services & Elections, Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE.

#### 2. What happens when a Petition is submitted?

- Receipt of a petition will be formally acknowledged to the lead petitioner in writing or by email as appropriate, within five working days of its receipt. In relation to an E-petition the lead petitioner will be informed that the Council will deem the petition to be held 'in abeyance' until such time as the end date has passed. At which time the Council will count up and, if necessary, verify the signatures etc. The Council will then action the petition in accordance with the provisions of this Scheme.
- The Council will accept any petition on face value but reserves the right to verify the signatures or investigate further, if deemed necessary. The petition must not be vexatious or frivolous or defamatory or offensive. It must not be substantially the same as a Petition previously received and dealt with by the Council within the past 12 months.

- It must also relate to a matter for which the Council has responsibility for, subject to the exceptions detailed below:

Petitions Received in respect of Planning Applications, the Local Plan making process and other Regulatory Matters (such as licensing applications submitted under the Licensing Act 2003 and the Gambling Act 2005)

Petitions received in respect of planning or licensing applications shall not be treated as petitions for the purposes of this scheme but will be sent to the appropriate department and will be considered as representations received in relation to that particular application or planning matter.

Petitions received in respect of the Local Plan making process will be referred to the Planning Policy & Local Plan Committee.

Community Governance Petitions

Community Governance petitions will be considered initially against the relevant provisions of the Local Government and Public Involvement in Health Act 2007. Those petitions that do not meet the criteria under that Act to trigger a Community Governance Review will then be considered against the criteria contained within this Scheme.

Petitions for a Referendum for an Elected Mayor and Cabinet or a Committee System of Local Government

Petitions for a referendum for an Elected Mayor and Cabinet or a return to a Committee System of Local Government will be considered initially against the relevant provisions of the Local Government Act 2000 and related legislation such as the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2011 (as amended). Those petitions that do not meet the criteria under that Act and supporting legislation to trigger a Referendum will then be considered against the criteria contained within this Scheme.

The Head of Democratic Services & Elections (or, in their absence or other unavailability, the Committee Services Manager) will decide whether a petition is valid and/or acceptable. In making their decision those Officers will consult, if necessary, the Monitoring Officer. If the decision made is to reject the petition as being invalid and/or unacceptable the Head of Democratic Services and Elections (or Committee Services Manager) will inform the Lead Petitioner accordingly, explaining the reasons why the petition cannot be accepted under this scheme and, if appropriate, informing the petitioner that the petition will be forwarded to the relevant department together with a request that they respond directly to the petitioner on the matters raised.

- If the issue contained within the petition is not something which the Council would ordinarily consider in public as it would require the disclosure of confidential or exempt information (as defined in local government law), the lead petitioner will be informed accordingly, explaining the reasons why the petition cannot be accepted under this scheme and where appropriate, referring the petitioner to the relevant department and advising them as to how their views can be expressed via alternative means.
- If the issue contained within the petition does not relate to any functions or responsibilities of the District Council, but does relate to a matter for which Essex County Council or other body or partner is responsible, the petition will be forwarded to that organisation and the lead petitioner advised accordingly.
- Each petition received shall be based on a tiered system whereby:
  - (a) A valid petition containing 30 to 500 signatures from Tendring residents or non-residents who can be clearly identified as either working or studying in Tendring, will be reported to Council for information. It will then be presented to the first practicable meeting of the Cabinet (if it relates to a matter that is an Executive function under the law) or the appropriate committee and then, if so requested, the matter will be investigated and a report will be brought back to the Cabinet/Committee for consideration;
  - (b) A valid petition containing 501, or more signatures from Tendring residents or non-residents who can be clearly identified as either working or studying in Tendring, will be reported to Council to advise that the petition has been received. Once it has been investigated, a report will be prepared and presented with the petition at the next meeting of the Council for consideration. If it relates to a matter that is an Executive function under the law the petition will also be presented to the first practicable meeting of the Cabinet and any views, comments or recommendations made by Cabinet will be incorporated into the aforementioned report to Council.
  - (c) The appropriate Ward Member(s) will be informed of receipt of a petition and any action to be taken.

*Note: Where the subject of a petition requires urgent action (i.e. it cannot wait until the following meeting of the Council) it is proposed that the petition be investigated and a report be presented to the first available meeting of the appropriate committee or Cabinet (if it relates to a matter that is an Executive function under the law).*

In the period immediately before an election or referendum the Council may need to deal with petitions differently. If this is the case, the Head of Democratic Services & Elections,

having consulted the Monitoring Officer, will explain, in writing, the reasons to the Lead Petitioner and inform them of the revised timescale that will apply.

- When a petition is being initially considered by a committee or the Cabinet (or Council, following investigation and a report being brought back), the lead petitioner will be invited to address the committee, Cabinet or Council as the case may be, outlining the reasons for the submission of the petition and what action they would like the Council to take. The lead petitioner (or his or her representative) will have a time limit of three minutes for their speech and the petition will then be discussed by Councillors. A Ward Councillor can, at the request of the lead petitioner, present the petition to the committee, Cabinet or Council, as the case may be, on their behalf and will have a time limit of three minutes for their speech.
- Where the lead petitioner requests a representative or a Ward Councillor to speak on their behalf, the lead petitioner must inform the Head of Democratic Services & Elections (or the Committee Services Manager) in writing or by email in advance of the relevant meeting of the name of that representative/Ward Councillor.
- Should two petitions be received on the same issue (including if one is in support and one opposing a course of action) then both lead petitioners will be invited to address Cabinet or Council at the same time.
- The relevant Ward Member(s), Cabinet Member(s) and officers will be informed when a valid petition covering their Wards and/or areas of responsibility is received and when and how the petition will be considered.
- The lead petitioner will be informed, in writing, of the committee's Cabinet's or Council's decision as the case may be and this information will also be published on the Council's website via the Minutes of the relevant meeting at which the petition was dealt with. If a further meeting is to be held to consider the issues raised in the petition, the lead petitioner will be supplied with the relevant details and will also be given the opportunity to attend and, if so requested by the chairman, address that meeting and/or answer any questions posed at the meeting.
- Relevant Officers will be required to attend any meeting to assist in the scrutiny and investigation of issues raised in the petition. As a general principle, the relevant Officers should be at a Head of Service level or above.
- Where possible, the consideration of a petition will be held in public but, in exceptional circumstances, it may be necessary for an issue to be considered as a "exempt" item under the Local Government Act 1972, the Access to Information Act 1985 and other relevant legislation. In such circumstances, the lead petitioner, public and press will be excluded from the meeting (or part of it) but the reasons for their exclusion will be clearly communicated to them and will also be included in the Minutes of that meeting.

**3. What happens after a Petition has been considered?**

There are several courses of action available to the committee, Cabinet or the Council (as appropriate) once a petition has been considered, including:

- No action (with reasons as to why no action is proposed)
- Taking the action requested in the petition
- Taking an alternative or amended course of action to that requested in the petition (with reasons as to why such action is being taken)
- Undertaking research into the matters raised (this could include referring the matter to the relevant Portfolio Holder, or officer of the Council) and holding a meeting with the petitioners.
- Referring the petition to a Committee or Cabinet or an external person/body (such as the County Council or Government body or Public Services or the Ombudsman or Member(s) of Parliament
- Holding a public meeting
- Holding an inquiry
- Providing a written response to the lead petitioner setting out the Council's views on the request in the petition
- Deferring consideration of the petition to a future committee, Cabinet or Council meeting
- Calling for a referendum (if permitted under the legislation and subject to costs)

**TENDRING DISTRICT COUNCIL**



**MEMBERS' CODE OF CONDUCT**

(Adopted by the Council on 23 January 2018)

(Code as regards the conduct which is expected of all elected Councillors, voting co-opted members and appointed members)

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**TENDRING DISTRICT COUNCIL**  
**MEMBERS' CODE OF CONDUCT**

**1. INTRODUCTION TO THE CODE OF CONDUCT**

- 1.1 Trust and confidence in public office-holders and institutions are important for the functioning of local authorities. This is particularly true in the case of elected office-holders. The Council has therefore adopted this Code of Conduct for elected Members (also referred to as “Councillors”) to promote and maintain high standards of conduct in public life. It is each Member’s responsibility to comply with the provisions of this Code.
- 1.2 The Code of Conduct applies to all elected Members, voting co-opted Members and appointed Members.
- 1.3 The Code covers three main areas:
- **Part 1** sets out some general obligations regarding the behaviour of elected and co-opted Members (“**Rules of Conduct**”)
  - **Part 2** explains how Members should behave if they have a personal/code interest in an item of Council business (“**Members’ Interests**”)
  - **Part 3** sets out rules requiring registration of interests for public inspection (“**Register of Members’ Interests**”)

The Principles of Public Life are set out in the Appendix.

**2. Interpretation of when the Code of Conduct applies?**

- 2.1 In this Code “meeting” means any meeting of
- (a) Tendring District Council (“the Authority”);
  - (b) the Cabinet (also known as the Executive) of the Authority
  - (c) any of the Authority’s or Cabinet’s committees, sub committees joint committees, joint sub-committees, or area committees (including working parties and panels); or
  - (d) informal meetings with other Members and/or Officers relating to the discharge of the Authority’s functions.
- 2.2 The Code of Conduct applies—
- (a) whenever a Member conducts the business, or are present at a meeting, of the Authority; or
  - (b) whenever a Member acts, claims to act or gives the impression they are acting in the role of Member to which they were elected or appointed; or



- (c) whenever a Member acts, claims to act or give the impression they are acting as a representative of the Authority (including representation on outside bodies); or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 3.4(a) and 3.5; or
- (e) in respect of any criminal offence for which they have been convicted during their term of office.

- 2.3 Where a Member is elected, appointed or nominated by the Authority to serve on any other authority or body they must, when acting for that other authority or body, comply with the code of conduct of that other authority or body.
- 2.4 Where a Member is elected, appointed or nominated by the Authority to serve on any other body which does not have a code relating to the conduct of its members, they must, when acting for that other body, comply with this Code of Conduct, unless it conflicts with any other lawful obligations to which that other body may be subject.

### **3. Principles of Public Life**

- 3.1 The Localism Act 2011 requires the Authority to have a code of conduct which is consistent with the 'Nolan Principles' determined by the Committee on Standards in Public Life. These Principles are set out in the Appendix A to this Code. The Code is consistent with the Nolan Principles but any breach of the principles is not by itself a breach of the Code.

Members of Tendring District Council shall have regard to the Seven Principles of Public Life as it is these principles which underpin the Rules of Conduct set out below.

## **PART 1**

### **RULES OF CONDUCT**

#### **3.2 In fulfilling Duties and Responsibilities**

Members must not:

- (a) breach their duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) disrespect others;
- (c) bully or harass any person; or
- (d) do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the Authority.

### 3.3 Information

Members must not:

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

### 3.4 Conduct

Members must:

- (a) not conduct them self in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute;
- (b) not make vexatious, malicious or frivolous complaints against other Members or anyone who works for, or on behalf of, the Authority.
- (c) comply with any request of the Authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.

### 3.5 Use of the Position

Members must not:

- (a) in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for them self, or any other person, an advantage or create or avoid for them self, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of the Authority—
  - (i) imprudently;
  - (ii) in breach of the Authority's requirements;
  - (iii) unlawfully;
  - (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the Authority or of the office to which they have been elected or appointed;
  - (v) improperly for political purposes; or
  - (vi) improperly for private purposes.

### 3.6 Registration of Interests

In accordance with and subject to Part 2 of the Code, Members are required to register details of their Disclosable Pecuniary Interests and their Personal Interests within 28 days of

becoming a Member (or being re-elected or reappointed) or a change in those details, in the Authority's Register of Interests.

### 3.7 **Decision Making**

Members must:

- (a) when participating in meetings or reaching decisions regarding the business of the Authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the Authority's officers, in particular by—
  - (i) the Authority's Head of Paid Service;
  - (ii) the Authority's s.151 Officer/ Chief Finance Officer;
  - (iii) the Authority's Monitoring Officer/ Chief Legal Officer;
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Authority.

### 3.8 **Compliance with the Law and the Authority's Rules and Policies**

Members must:

- (a) observe the law and the Authority's rules governing the claiming of expenses and allowances in connection with their duties as a Member;
- (b) comply with the Local Authority Code of Publicity made under the Local Government Act 1986 and any relevant guidance issued;
- (c) comply with the provisions of the Bribery Act 2010 or similar;
- (d) comply with the Authority's Gifts and Hospitality Policy;
- (e) comply with any other policy (or part of policy) which sets out required conduct from Members, for example the Member/Officer Working Protocol and Planning Code for Members, or similar.

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**PART 2****MEMBERS' INTERESTS**

**Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.**

**4. Disclosable Pecuniary Interests**

- 4.1 Disclosable Pecuniary Interests (DPIs) are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are set out in Appendix B to this Code. It is important that Members understand what amounts to a DPI, that they identify carefully all DPIs relevant to them and that they take the necessary action required by law. Breach of the requirements related to DPIs is a criminal offence and are referred to the Police.
- 4.2 A Member will have a Disclosable Pecuniary Interest in any business of their Authority if it is of a description set out in Appendix B and is either:
- (a) their own interest, or that of a Relevant Person being:
  - (b) an interest of their spouse,
  - (c) an interest of their civil partner, or
  - (d) an interest of a person with whom they are living with as a spouse or civil partner,

and in the case of paragraphs 4.2(b) – (d) the Member is aware that the Relevant Person has the interest.

**5. Personal Interests**

- 5.1 A Member will have a Personal Interest in any item of business of the Authority where it relates to or is likely to affect –
- (a) any person or body who employs or has appointed them;
  - (b) any existing contract for goods, services or works, which has not been fully discharged or has expired within the last 2 years, and made between the Authority and
    - (i) the Member,
    - (ii) a Related Person;
    - (iii) a body in which the Member has a Disclosable Pecuniary Interest; or
    - (iv) a person or body of the description specified in paragraphs 5.1 (c)-(d) below;

- 
- (c) any body of which the Councillor is a member or in which they hold a position of general control or management and to which they are appointed or nominated by the Authority;
- (d) any other body of which the Councillor is a member and in which they hold a position of general control or management –
- (i) exercising functions of a public nature;
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
- (e) the interests of any person from whom the Member has received a gift or hospitality with an estimated value of at least £50;
- (f) a decision in relation to that business which might reasonably be regarded as affecting the financial position or wellbeing of:
- (i) the Member or
  - (ii) a Related Person (if the Member is aware of its existence)
- to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, affected by the decision;

5.2 Related Person is defined as:

- a member of the Councillor's family; or
- any person with whom the Councillor has a close business or personal association.

In the case of a Related Person, a Councillor is only required to declare those interests which they are aware or ought reasonably to be aware of the existence.

## 6. Declaration of Members' Interests

6.1 Subject to sub-paragraphs 6.2 to 6.3, where a Member has a Disclosable

Pecuniary or Personal Interest in any business of the Authority and they are present at a meeting of the Authority at which the business is considered, they must declare to that meeting the existence and nature of that interest whether or not such interest is registered on their Register of Interests or for which they have made a pending notification.

6.2 Sub-paragraph 6.1 only applies where a Member is aware or ought reasonably to be aware of the existence of the Relevant Person's (as defined in 4.2 above) Interest or the Related Person's (as defined in 5.2 above) Interest.

6.3 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 but by virtue of paragraph 11 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary or Personal Interest they do not need to declare the nature of the interest to the meeting.

6.4 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 and they are acting as a Cabinet Member, making an executive decision in relation to that business they must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## **7. Declaration of Personal Interests generally**

7.1 Subject to sub-paragraphs 7.2 & 7.3 below, a Member has a duty to declare any Personal Interest, as set out in paragraph 5 above, in considering any business of the Authority, where that interest is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest.

7.2 Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.

7.3 A Member does not have a declarable interest in any business of the Authority where that business relates to the functions of the Authority in respect of:

- i. housing, where the Member is a tenant of the Authority provided that those functions do not relate particularly to their tenancy or lease;
- ii. school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or are entitled to the receipt of, such pay;
- iv. an allowance, payment or indemnity given to Members;
- v. any ceremonial honour given to Members; and
- vi. setting Council Tax or a Precept under the Local Government Finance Act 1992

**8. Effect of Disclosable Pecuniary Interests on participation**

- (a) If a Member is present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and they have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and they are aware of that Interest:
  - (i) the Member must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
  - (ii) the Member must withdraw from the room or chamber where the meeting considering the business is being held unless they have received a dispensation from the Authority's Monitoring Officer.
- (b) If a Member has a Disclosable Pecuniary Interest in any business of the Authority they must not:
  - (i) exercise executive functions in relation to that business; and
  - (ii) seek improperly to influence a decision about that business
- (c) If a function of the Authority may be discharged by a Member acting alone and they have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function they may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by them self).

**9. Effect of Personal Interests on participation**

- 9.1 If a Member has a Personal interest (not a Disclosable Pecuniary Interest) in any business of the Authority which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and they are present at a meeting of the Authority at which such business is to be considered or is being considered the Member must:-
- (a) Declare the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)
  - (b) Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making representations or in any other case when the business is under consideration, unless they have obtained a dispensation from the Authority's Monitoring Officer.

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**PART 3****REGISTER OF MEMBERS' INTERESTS****Registration of Members' Interests**

- 10.1 Subject to paragraph 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
  - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of Disclosable Pecuniary Interests as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner in so far as they are aware of their interests at that time.
- 10.2 Subject to paragraph 11, Members must, within 28 days of becoming aware of any new or amended Disclosable Pecuniary Interest as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner or change to any interest registered under paragraph 4 above by providing written notification to the Authority's Monitoring Officer.
- 10.3 Subject to paragraphs 10.5 and 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
  - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Personal Interests details of Personal Interests as referred to in paragraph 5, that the Member is aware of at that time.
- 10.4 Subject to paragraphs 10.5 and 11, Members must, within 28 days of becoming aware of any new or amended Personal Interest as referred to in paragraph 5 or change to any interest registered under paragraph 5 above by providing written notification to the Authority's Monitoring Officer.
- 10.5 The provisions of paragraphs 10.3 and 10.4 above, do not apply to any Personal Interest which concerns a Related Person, as these interests are not required to be registered in advance and only declared at a meeting of the Authority at which the business is considered and the Member is present.
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**11. Sensitive Information**

- 11.1 Where a Member has an interest referred to in paragraphs 4 or 5, and the nature of the interest is such that the Member and the Authority's Monitoring Officer consider that disclosure of details of the interest could lead to the Member or a person connected with them being subject to violence or intimidation if the interest is entered in the Authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that the Member has an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 11.2 Members must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's Monitoring Officer.
- 11.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that the Member or a person who lives with them may be subject to violence or intimidation.

**APPENDIX A**

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

**The Nolan Principles**

<b><i>Selflessness</i></b>	Holders of public office should act solely in terms of the public interest.
<b><i>Integrity</i></b>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<b><i>Objectivity</i></b>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<b><i>Accountability</i></b>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<b><i>Openness</i></b>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<b><i>Honesty</i></b>	Holders of public office should be truthful.
<b><i>Leadership</i></b>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**APPENDIX B**

“Disclosable Pecuniary Interests” are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are:-

**Employment, office, trade, profession or vacation**

Any employment, office, trade, profession or vocation carried on for profit or gain.

**Sponsorship**

Any payment or provision of any other financial benefit (other than from the relevant Authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a Member, or towards the election expenses of the Member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

**Contracts**

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant Authority—

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

**Land**

Any beneficial interest in land which is within the area of the relevant Authority.

**Licences**

Any licence (alone or jointly with others) to occupy land in the area of the relevant Authority for a month or longer.

**Corporate tenancies**

Any tenancy where (to the Member’s knowledge)—

- (a) the landlord is the relevant Authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

**Securities**

Any beneficial interest in securities of a body where—

- (a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant Authority; and
- (b) either—
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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**TENDRING DISTRICT COUNCIL  
COMPLAINTS PROCEDURE****1. Context**

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member (with voting rights) of this Authority (“Tendring District Council” or a Town or Parish Council within its area (see 1.3 below)) has failed to comply with the Member Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Member Code of Conduct.
- 1.2 Under **Section 28(6) and (7) of the Localism Act 2011**, Tendring District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Authority (*or of a Town or Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Town and Parish Councils within the Tendring District are set out on the Council’s website.
- 1.4 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation against a Member, which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles.

**2. The Member Code of Conduct**

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the website or on request from reception at the Council Offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should visit the website operated by the Town or Parish Council or request the Town or Parish Council Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

**3. Making a Complaint**

- 3.1 If you wish to make a complaint, please write to or email:

The Monitoring Officer, Tendring District Council,  
Corporate Services, Town Hall, Station Road,  
Clacton-on-Sea, Essex CO15 1SE

[standards@tendringdc.gov.uk](mailto:standards@tendringdc.gov.uk)

The Complaints Form can be downloaded from the website.

- 3.2 The Monitoring Officer is a senior officer of the authority who has a statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the

system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which is available on request from the reception at the Council Offices or via the website. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The name and address of a complainant will be provided to the member that is the subject of the complaint. In exceptional cases, we may agree to withhold your name and address from the member. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form along with the reasons why you feel it necessary for your name and address to be withheld. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

- 3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.

- 3.5 Following receipt of your complaint, the Monitoring Officer will:-

- (a) acknowledge receipt of your complaint within 10 working days of receiving it;
- (b) notify, within 10 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above;
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint; and
- (d) your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.

- 3.6 The Complaints Procedure Flowchart is set out at the end of this procedure for reference.

- 3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.

- 3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaints procedure. The Monitoring Officer will also adhere to this confidentiality and only inform/contact any such individuals which are identified in the procedure or by the parties. If the details of the complaint are made public, it may be necessary for a statement to be issued by the Monitoring Officer for clarification only.

**4. Will your complaint be investigated?**

4.1 The Monitoring Officer will review every complaint received and, may consult with one of the Independent Persons before making a decision as to whether the complaint:

- 4.1.1 Merits no further action
- 4.1.2 Merits early informal resolution or mediation
- 4.1.3 Merits further investigation

4.2 In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.3 The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria included at **Annex D (set out at the end of this procedure for reference)**.

Where the Monitoring Officer has taken a decision, you will be informed of the decision and the reasons for that decision. The Monitoring Officer may require additional information in order to come to a decision, and may come back to you for such information. In the absence of a response from you within 15 working days the Monitoring Officer may close the complaint. Information may be requested from the member against whom your complaint is directed to enable the Monitoring Officer to take the decision. In the absence of the subject Member's response within 15 working days the Monitoring Officer may proceed with the complaint.

Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer *may* also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

Any failure to comply with the time scale by the Monitoring Officer or parties concerned will be notified to the Standards Committee or Sub-Committee together with reasons for the delay and the member subject of the complaint and the complainant will be kept informed of progress and reasons for the delay.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or agreeing to mediation and/or

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other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

Where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required for informal resolution or mediation; this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies, subject to the necessary Legal Jurisdiction Criteria Test being applied.

**5. Referral to the Standards Committee or Sub-Committee and how is the Investigation conducted?**

(The Committee and Sub-Committee Terms of Reference are included at **Annex C (set out at the end of this procedure for reference)**).

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints a summary of which is attached as **Annex E (set out at the end of this procedure for reference)**.

The Council has a Town and Parish Councils' Standards Sub-Committee which has responsibility for dealing with complaints regarding the actions of a Town or Parish Councillor, reference to the Sub-Committee throughout this procedure relates to the Town and Parish Council's Standards Sub-Committee.

- 5.2 If the Monitoring Officer decides that a complaint merits further investigation without referral to the Standards Committee or Sub-Committee, he/she will commission the investigation to be undertaken by a suitably qualified investigator with requisite experience and may include another officer of the Council, a senior officer of another authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained.

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed. Any information supplied to the Monitoring Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, may be shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards



Committee is convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.

- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer’s report is sufficient, subject to 6.3 below, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.
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Exceptional cases may include but not be limited to matters where the evidence is so finely balanced or is in the public interest to do so.

**7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

7.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and will then either refer the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with one of the Independent Persons and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or mediation and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee or Sub-Committee (*and the Town or Parish Council*) for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Committee or Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and made available for public and press inspection, however, the Investigators Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

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The Members of the Standards or Sub-Committee, after hearing all the evidence and information, may adjourn the meeting for a short period and deliberate together in private. The hearing will then be reconvened and the Decision will be announced in public. It is expected that this will usually be on the same day.

The Standards Committee or Sub-Committee, with the benefit of any comments or advice from one of the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the decision is contrary to a recommendation from the Investigating Officer and/or Monitoring Officer, detailed reasons will be required to be published in the Decision Notice. The decision of the Standards Committee or Sub-Committee will also be reported to the next meeting of Full Council.

If the Standards Committee or Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

**8. What action might the Standards Committee or Sub-Committee take where a member has failed to comply with the Code of Conduct?**

8.1 The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-

- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
- 8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;
- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to (*or recommend that the Town or Parish Council*) arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (*or recommend to the Town or Parish Council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Town or Parish Council*);
- 8.1.7 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of (*or recommend to the Town or Parish Council that it withdraws*) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or

- 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of *(or recommend that the Town or Parish Council exclude)* the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.
- 9. What happens at the end of the hearing?**
- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member *(and to the Town or Parish Council if appropriate)*, make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.
- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent Person will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.
- 10. Who forms the Standard Committee or Sub-Committee?**
- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Tendring District Association of Local Councils);
- 10.3 At least one of the two Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether a member's conduct constitutes a failure to comply with the Code of
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Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

**11. Who are the Independent Persons?**

11.1 The Council has appointed two Independent Persons to support the Standards Committee and Sub-Committee.

11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person protocol which sets out some general principles.

**12. Revision of these Arrangements**

The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

**13. Appeals**

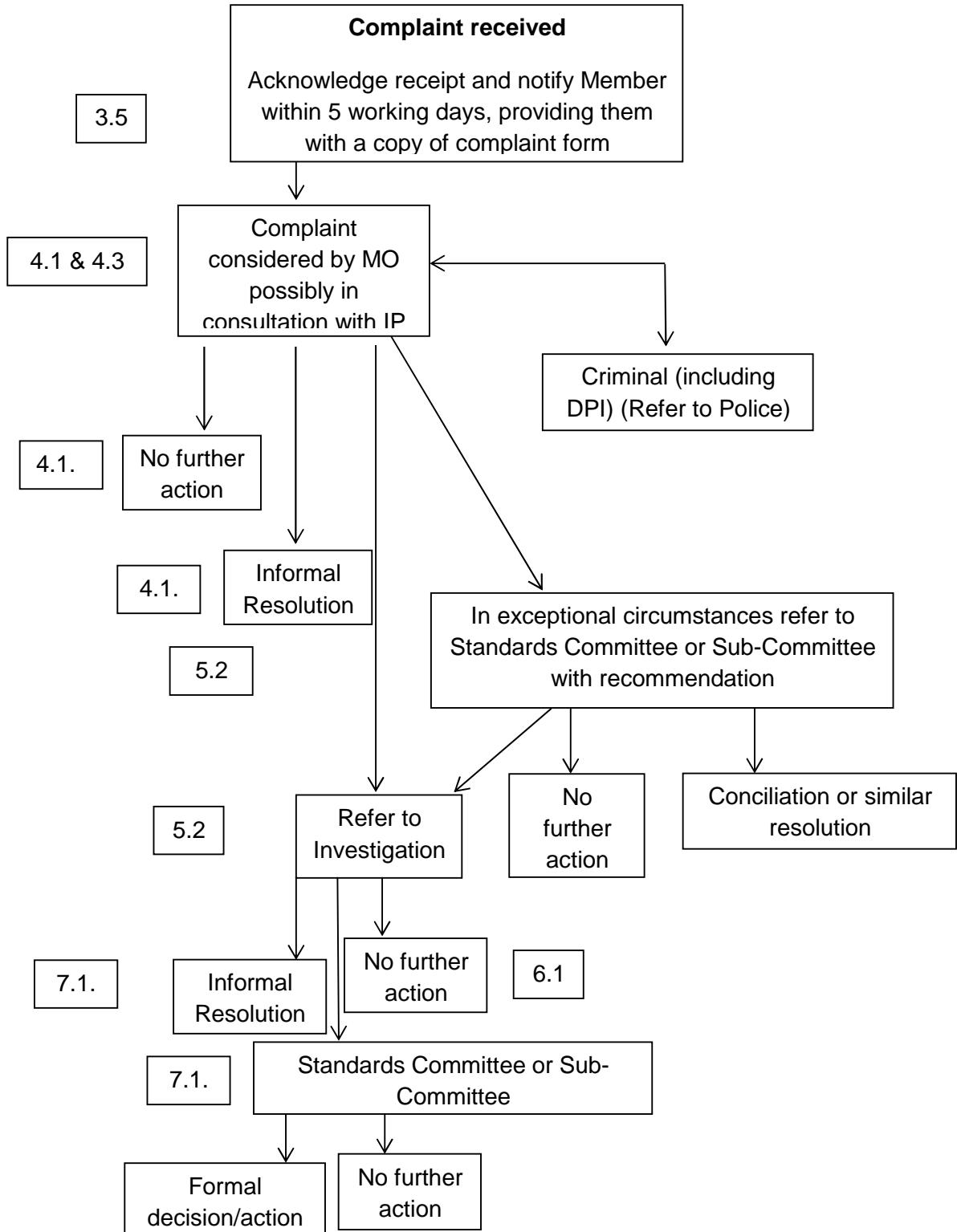
13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee.

13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

ANNEX B

This Flowchart is to be read in conjunction with the Tendring District Council's Complaints Procedure

(Reference is made to the relevant paragraphs of the Procedure in the boxes on the left hand side)



**ANNEX C – STANDARDS COMMITTEE AND TOWN AND PARISH COUNCILS' SUB-COMMITTEE  
TERMS OF REFERENCE**

<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Standards Committee</b>	<ol style="list-style-type: none"> <li>1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;</li> <li>2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels of the Council;</li> <li>3. To advise the Council on the adoption or revision of the Members' Code of Conduct;</li> <li>4. To advise, train or arrange training on matters relating to and assisting Members, Co-opted Members and Town and Parish Councillors on observing the Members' Code of Conduct;</li> <li>5. To approve procedures for the conduct of hearings into complaints against Members;</li> <li>6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;</li> <li>7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework;</li> <li>8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;</li> <li>9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and</li> <li>10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure.</li> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> </li> <li>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</li> </ol>

(Grey)

	<p><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> <li>3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and</li> <li>4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.</li> </ol>	<ol style="list-style-type: none"> <li>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct.</li> <li>5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011.</li> <li>6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</li> </ol>
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Town and Parish Councils' Standards Sub-Committee</b>	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> <li>3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and;</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure.</li> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether</li> </ol>

(Grey)



	<p>4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.</p>	<p>the complaint:</p> <ul style="list-style-type: none"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p> <p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>
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**ANNEX D  
CONDUCT COMPLAINTS ASSESSMENT CRITERIA****Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee**

1. The complaint is not considered sufficiently serious to warrant investigation;
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”;
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
5. It is about someone who is no longer a Councillor;
6. There is insufficient information available;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances, e.g. an allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee;
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

**Complaint which may be referred for investigation and/or to the Standards Committee or Sub-Committee**

1. It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee or Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to consider; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to consider; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to consider.

**Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ time and Members’ time. This is an important consideration where the complaint is relatively minor.**

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**ANNEX E  
STANDARDS COMPLAINTS INVESTIGATION PROCEDURE**

**Members are reminded that they are required to co-operate with the investigation process as part of their compliance with the Code of Conduct and to ensure that the procedure is undertaken in an efficient and resourceful manner.**

**1. Planning Stage:**

Upon receipt of an instruction to carry out an investigation the Investigator should:-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Members' Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.
- Tendring District Council has imposed a 3 month deadline for an investigation to be completed; this may be reduced by the Monitoring Officer in each individual case. The Investigating Officer must confirm that the deadline is achievable and regularly update the Monitoring Officer, subject member of the complainant and the complainant as to progress.

**2. Evidence Gathering Stage:**

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.
- If new evidence is obtained through the investigation that the subject member has not been made aware of, this should be provided to the Councillor to respond to either orally or in writing.

**3. Interview Stage:**

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (preferably in order of: the complainant, witnesses and subject member and any of their witnesses).
- The Investigating Officer when interviewing the subject member must ask them to respond to each point of the complaint and alleged breach of the Code of Conduct.
- The Investigating Officer should make every effort to gather evidence from the Complainant and subject member by way of a face to face interview.

**4. Report Stage:**

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain:
  - Details of who was interviewed, who supplied information and whether through written documentation or verbally;
  - Agreed facts;
  - Facts not agreed and corresponding conflicting evidence;
  - An assessment on all of the alleged breaches of the Code of Conduct forming the complaint and those identified by the Monitoring Officer or Investigator;
  - Conclusions as to whether a breach has occurred;
  - Where a draft report is issued this will be supplied to both the complainant and subject member for comment, in addition to the Monitoring Officer.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion.

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**TENDRING DISTRICT COUNCIL  
MONITORING OFFICER PROTOCOL**

This Protocol relates to the discharge of the Monitoring Officer functions in relation to the assessment of an allegation that a Member of the District, Town or Parish Council has failed to comply with the Council's Members' Code of Conduct.

**1. Overarching Principles:**

- (a) The Monitoring Officer is a statutory appointment under s.5 of the Local Government and Housing Act 1989.
- (b) This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
- (c) The Monitoring Officer will discharge their statutory responsibilities with a positive determination contributing to promotion and maintenance of high standards of conduct, in a manner that enhances the overall reputation of the Council, in particular:
  - Complying with the law (including any relevant Codes of Conduct);
  - Complying with any general Guidance issued including consideration of Best Practice;
  - Complying with the procedures adopted by the Standards Committee following such guidance;
  - Complying with the Council's Constitution and standing orders; and
  - Acting impartially in the interests of fair and natural justice.
- (d) The Monitoring Officer must establish and maintain a Register of Interests of Members and co-opted Members of the Authority.
- (e) The Monitoring Officer is employed by Tendring District Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members. Accordingly, when they are of the opinion that providing advice to a Member or group of Members on a matter is incompatible with their role as adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority.
- (f) Where the advice or recommendation of the Monitoring Officer is departed from by the Standards Committee or Sub-Committee, in accordance with administrative law, full reasons will be provided by the relevant Committee in making its decision.
- (g) This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure and Independent Person's Protocol.
- (h) The Monitoring Officer is the principal adviser to the Standards Committee and Sub-Committee. Additional advice and support is provided by Officers within the Legal and Democratic Services teams.

- (i) The Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends in relation to the promotion and maintenance of high standards of conduct at these Authorities.
- (j) The Monitoring Officer will consult with one of the Independent Persons on complaints received and throughout the process in accordance with the Complaints Procedure.
- (k) In circumstances where either the Monitoring Officer or one of the Officers has made a complaint, witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not exist. These procedures will consist of maintaining an information barrier and restricted access to the matter in consideration; this is referred to as “conflicted out”.

In practical terms, in these circumstances, the Monitoring Officer or Officer will take no part in the process unless called upon either as the complainant or as a witness.

- (l) In instances (exceptional circumstances) where the Monitoring Officer decides to refer a complaint to the Standards Committee or Sub-Committee for initial assessment or further investigation, in accordance with the Complaints Procedure (see flowchart), any approved information as is readily available, which would assist the Standards Committee or Sub-Committee in its function of considering the allegation will be attached to their Report.
- (m) In providing information, in any manner at any stage in the process, the Monitoring Officer must satisfy that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.
- (n) It is recognised that, where a complaint is referred for investigation, this may not be personally conducted by the Monitoring Officer. The investigator instructed will be suitably qualified with the requisite experience and may include another senior officer of the Council, a senior officer of another Authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained. Wherever possible and if appropriate to do so, the Monitoring Officer will seek external resources from outside of the County of Essex.

## **2. Receipt of Allegations:**

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints Procedure. The Monitoring Officer will treat this as a general complaint and forward it to be dealt with under the Council’s general formal complaints process, as appropriate.
- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

**3. Consultation with the Independent Persons:**

- (a) The Monitoring Officer and supporting Officers will facilitate the contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the Complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the parties.
- (b) The Monitoring Officer will allocate roles for the Independent Persons in accordance with their Protocol and each party will be notified who the relevant Independent Person is and that they will be in contact shortly.
- (c) The Monitoring Officer does not have to agree with the Independent Person but if a different view is taken the Monitoring Officer will consult with another Independent Person in the first instance, before making a final decision.

**4. Standards Committee and Sub-Committee:**

- (a) The Monitoring Officer, in consultation with the relevant Chairman of the Standards Committee or Sub-Committee will decide on the type of attendance permitted for an Independent Person when considering complaints.
- (b) All meetings of the Standards Committee or Sub-Committee are considered to be open to the public and press unless (c) and (d) below apply.
- (c) The Monitoring Officer will advise the Standards Committee or Sub-Committee when to go into private session and exclude public access to the meeting in accordance with the Access to Information Procedure Rules, as set out in the Council's Constitution.
- (d) In accordance with Access to Information Procedure Rules, if the Monitoring Officer or Deputy Chief Executive considers it appropriate, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with the meeting at which those reports are to be discussed is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.
- (e) Any decision departing from the Monitoring Officer's recommendation or advice will be supported with full reasons and recorded within the public part of the minutes for the meeting.

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**TENDRING DISTRICT COUNCIL  
INDEPENDENT PERSON PROTOCOL**

This Protocol sets out the expected conduct of Tendring District Council's Independent Persons (IP) when carrying out their consultation functions in relation to an allegation that a Member, or co-opted Member, of the District Council, or a Member, or co-opted Member, of a Town or Parish Council within the District, has failed to comply with the relevant Council's Code of Conduct.

### Principles

1. The role of the IP is set down in legislation (section 28 of the Localism Act 2011). *Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate.*
2. The purpose of the IP role is to enable the public to have confidence in how the District Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for members, ensuring they are adequately trained and understand the Code of Conduct.
3. This Protocol applies to all IPs equally and complements the Monitoring Officer Protocol. If the Council is in a position where less than two IPs are appointed due to a vacancy, this Protocol still applies in its entirety, so long as one IP is in place (as required by the legislation)
4. The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
5. In carrying out the role, the IP will ensure that they:
  - (a) Act in accordance with –
    - (i) any relevant legislation or guidance and the respective Council's Members' Code of Conduct in force at that time; and
    - (ii) the agreed processes/procedures approved by the District Council's Standards Committee and Constitution;
  - (b) Act impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice;
  - (c) Maintain confidentiality at all times; and
  - (d) Conduct themselves in accordance with the principles of high standards of conduct expected when acting in public life.
6. The IP role is consultative at various stages of the process, in accordance with the Complaints Procedure and the Monitoring Officer's (MO) role is to give advice to the Standards Committee or Sub-Committee.



7. The IP is not a member of the Council's Standards Committee or Sub-Committee but is able to attend meetings of the Committee, as a member of the public. The Committee or Sub-Committee may invite comments from the IP on any reports before them, at the discretion of the Chairman.
8. If the Standards Committee or Sub-Committee invites the IP to attend any meeting, the IP does not have any voting rights when doing so.
9. The outcome of any prior consultation with the IP undertaken by the MO will be included within any written report presented to the Standards Committee or Sub-Committee for their consideration. The IP's views must be sought before a decision is made after a complaint has been investigated. This will be undertaken by the MO in the first instance, but in some circumstances, it may be appropriate for the Committee or Sub-Committee to do this directly.
10. Whilst conducting hearings, if the Standards Committee or Sub-Committee meetings are adjourned for members' deliberations, an IP may be invited into these deliberations and invited to comment.
11. The MO will consult the IP on complaints received in accordance with the Council's procedure and requests for dispensations received in accordance with the Localism Act 2011.
12. Whilst the MO will have regard to the views expressed by the IP, they are not bound to accept their views on the matter.
13. When deciding on how to progress with a complaint, the MO and IP should consider the conduct complaints assessment criteria contained within the procedure.
14. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved with the matter.
15. If both of the IPs are conflicted out from dealing with the issue, the MO will consider making a request to use the services of an IP from another principal authority.
16. All contact with the IP should be made through the MO and should the IP be contacted directly by a complainant or Member, they should inform the MO immediately.
17. In terms of confidentiality, the IP must not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken.
18. The IP must provide the MO with appropriate methods of contact e.g. email and telephone numbers, and must make themselves available at all reasonable times.
19. On those occasions when the IP knows that they will not be contactable, they must inform the MO with as much reasonable notice as possible.

20. The IP should be prepared to give the Standards Committee or Sub-Committee, through the written report, an independent view on the complaint and the merit of the evidence put forward as required to assist the Committee in coming to a decision on the matter.
21. When discussing the complaint with the complainant or the Member subject of the complaint, the IPs role is not to give views on the merits of the complaint or the evidence in support but to give advice and reassurance on the process.
22. In each complaint, when necessary;
  - (a) one IP will be selected by the MO for initial consultation and if required, available to the Standards Committee or Sub-Committee for consultation as part of the Complaints Procedure and in accordance with the Localism Act 2011; and
  - (b) if requested by a party, the other IP will be made available to the Complainant or to the Member subject of the complaint – see paragraph 20 above.
23. The MO will allocate the roles between the IPs on a case by case basis. Should less than 2 IPs be appointed at any time, so long as 1 IP is in place the IP will be expected to be available for the respective parties set out in 22 (a & b).
24. The MO will ensure that the IPs are kept up to date with changes in legislation, national guidance or good practice.
25. The MO will update the IPs on progress of the cases on a bi-monthly basis.

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## PROTOCOL ON MEMBER & OFFICER RELATIONS

### **INTRODUCTION:**

The success of the Council is greatly dependent upon the positive nature of the working relationship between Members and Officers. Mutual trust and respect between both Members and Officers is essential to good local government.

The purpose of this protocol is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship.

The protocol also builds on the respective Codes of Conduct for both Members and Officers and through this promotes the maintenance of integrity, both real and perceived, of the Council as well as very high standards of personal conduct.

### **1. THE ROLES OF MEMBERS AND OFFICERS:**

- 1.1 In fulfilling their roles, the elected Members and Officers are both jointly responsible for:
  - (a) acting honestly, with integrity and in the public interest; and
  - (b) open and transparent objective decision making;
- 1.2 In addition, as set out in Article 2 of the Council's Constitution, the elected Members' role is to:
  - (a) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (b) Represent their communities and bring their views into the Council's decision-making process, i.e. become an advocate for their communities;
  - (c) Effectively represent the interests of their ward and of individual residents;
  - (d) Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances;
  - (e) Be involved in decision-making for the people of the District as a whole;
  - (f) Be available to represent the Council on other bodies; and

- (g) Contribute to the governance and effective management of the Council's business at meetings of the Council, Cabinet and other Committees and Sub-Committees, maintaining the highest standards of conduct and ethics.

1.3 In addition, the Officers are responsible for:

- (a) providing professional and technical advice that Members must have before them when formulating policy and when taking decisions;
- (b) lawfully implementing Members' decisions;
- (c) day-to-day administration, including staffing matters;
- (d) taking managerial and operational decisions in accordance with the Council's Scheme of Delegation;
- (e) the provision of information regarding Council services; and
- (f) undertaking public consultation.

## **2. WORKING RELATIONSHIPS – UNDERPINNING PRINCIPLES:**

To be followed by **both Members and Officers** in fulfilling their duties:

- Mutual respect and courtesy between Officers and Members;
- An awareness of each other's responsibilities and duties;
- No inappropriate criticism, intimidating behaviour or the creation of a threatening work environment of any kind from either Members or Officers;
- Any appropriate challenges are to be conducted in a professional and respectful manner;
- Equal treatment, regardless of personal or political opinion (actual or perceived);
- An adherence to the law and the lawful instructions and advice of others; and
- An avoidance of close personal familiarity.

The above principles are designed to foster the good working relationships between Officers and Members that are essential to effective decision making and the delivery of services.

Alleged breaches of the Members' Code of Conduct are dealt with through the Council's Standards Committee and in relation to the Officer Code, by the Head of Paid Service, in accordance with the Council's Human Resources Policies and Procedures.

If an Officer is concerned about the conduct of a Member, they should report this to their senior manager, who will notify both the Head of Paid Service and the Monitoring Officer. These concerns could include public criticism of an Officer by a Member or unreasonable, frivolous or vexatious requests for information.

### **3. OFFICER APPOINTMENTS, PERFORMANCE AND POLITICAL NEUTRALITY:**

- 3.1 The appointment of the Chief Executive (Head of Paid Service), the Monitoring Officer, the Chief Financial Officer, the Corporate Directors, Assistant Directors and Heads of Service will be made in accordance with the Officer Employment Procedure Rules. All other appointments are made at the appropriate Officer level.
- 3.2 The **Main Functions and Areas of Responsibility of Officers** are set out in Article 12 of the Council's Constitution. The position of the Chief Executive (Head of Paid Service) is to have overall corporate management and operational responsibility (including overall management responsibility for all officers).
- 3.3 Staffing matters (including discipline, training, setting and monitoring targets) are dealt with by the relevant managers, although the relevant Portfolio Holders/Cabinet Members will agree to targets in the case of the Chief Executive. All other targets are set at Officer level.
- 3.4 Members wishing to comment on an individual Officer's performance and/or deficiencies are usually expected to raise the matter with the relevant Corporate Director in the first instance. Thereafter to the Chief Executive if unresolved.
- 3.5 Officers are politically neutral, serve the whole Council and must avoid being identified with any political group. In order to safeguard this neutrality, Officers must avoid involvement in party political matters, such as campaigns in the political arena. This assumes particular significance in the run up to Elections. In their lives outside work, all politically restricted posts, which includes the Chief Executive, the Corporate Directors, Assistant Directors and many Senior Officers are prevented from active political involvement.
- 3.6 **OFFICER ATTENDANCE AND ADVICE TO PARTY GROUPS**
  - 3.6.1 The political parties represented on the Council hold regular group meetings. Officers do not usually advise at these meetings, but may be invited to give information. All invitations should be routed through the Chief Executive.

- 3.6.2 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such items being considered by the relevant Council decision-making body. The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member, Chairman or spokesperson (either jointly or individually) prior to a meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be most in demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.6.3 The parameters for support to party groups and individuals must be clearly understood, and to assist in this the following applies:-
- (i) The Chief Executive will inform all party groups of the facility for an Officer to attend a party group meeting for a specific purpose and will decide, on request, which Officer may attend.
  - (ii) Support must not extend beyond providing information and advice in relation to Council business. Officers must not be involved in advising on matters of party business and should not, therefore, be present at group meetings when such matters are being discussed.
  - (iii) Party group meetings are not empowered to make decisions on behalf of the Council and therefore any conclusions reached at group meetings do not rank as a Council decision and cannot be interpreted or acted upon as such.
  - (iv) Advice provided to party groups on an issue does not act as a substitute for providing all the necessary information and advice to Members at meetings when that issue is being considered.
  - (v) The attendance of Officers at a party group meeting does not confer any official standing to that meeting.
  - (vi) Special care will be exercised when non-Members are in attendance at a group meeting.
  - (vii) The provisions of the Code of Conduct do not apply to non-Members and therefore the nature of advice, guidance and information given by Officers may not be the same as that given to a Members-only meeting.
  - (viii) Officers must respect the confidentiality of discussions at party group meetings and must not relay the content of these discussions to any other party group.

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#### 4. DECISION MAKING – PROVIDING AND CONSIDERING ADVICE

- 4.1 Decision-making by local authorities is closely regulated by law. The taking of a decision by the wrong person/body or in the wrong way can invalidate the decision from the beginning or leave it vulnerable to being challenged and overturned by a court.
- 4.2 In the event of challenge, attention may also be focussed on the information, professional advice and options made available to the decision-making body or individual prior to that decision being made. Reports and/or other papers placed before decision-making bodies or individuals must therefore contain the relevant facts, correct and complete professional advice and alternative options that may be open to the Council. Officers have the duty to ensure that all of the information on an issue for decision by Members is available, subject to the provisions in this protocol and the Constitution on access to information.
- 4.3 The Officers are responsible for providing those reports and/or papers, and the Monitoring Officer and Chief Financial Officer are required to ensure that their proper advice is placed before decision-makers.
- 4.4 Officers preparing reports for consideration by Council or its Committees do so in the best interests of the Council and not to promote the viewpoint of a particular Member or group of Members.
- 4.5 Reports to Cabinet are drafted by Officers but submitted in the name of the relevant Cabinet Member and will be prepared with their input. Members must recognise that Officers drafting reports on behalf of the Cabinet, delivering the administration's policies, must include all the relevant information, various options and highlighting financial considerations and legal powers, ensuring informed decisions are made, as a whole through the Head of Paid Service.
- 4.6 Officers have a duty to give advice to the Council and its Members using their professional technical knowledge and experience. This will be provided within the report and/or papers and at the meeting, if required.
- 4.7 Members are entitled to expect Officer attendance at meetings at an appropriate level of expertise to ensure adequate knowledge and advice on the subject matter under discussion. Officers in attendance at meetings will always be fully briefed as far as is practical on the issues under discussion on an Agenda.
- 4.8 Such advice is given in good faith and will be in line with and reflect legislation, good practice, Council procedures, experience, professional and technical knowledge, and the Council's formally adopted policies.

- 4.9 Members are entitled to expect clear, concise and unambiguous information from Officers at all times to assist them in the decision making process. An Officer's advice must be given in accordance with the Council's instructions through the decision making and review process set out in the Council's Constitution and should be taken into account by Members when considering an action or making a decision.
- 4.10 Officers are also expected to faithfully and conscientiously implement the lawful decisions of Councillors and properly take decisions delegated to them.
- 4.11 Officers and Members must ensure that the Council's responsibilities regarding notification of and publication of decisions are complied with, as set out in the Access to Information Rules of Procedure in Part 5 of the Council's Constitution.
- 4.12 In addition to legal challenges and implications, failure to follow the decision making principles may amount to breaches of both the Members' and Officers' Code of Conduct and lead respectively to action under the Standards Framework or to disciplinary proceedings.

## 5. ACCESS TO INFORMATION

- 5.1 Both Members and Officers must adhere to the Access to Information provisions concerning all information, including confidential information set out in Part 5 of the Council's Constitution.
- 5.2 Disclosure of confidential information by either a Member or Officer will constitute a breach of their relevant Code of Conduct and the appropriate action will be taken. In addition, the Council could be exposed to a damages or compensation claim as a result of the disclosure.
- 5.3 Members are entitled to receive information from Officers in a timely manner to reasonable requests for the purposes of undertaking their role as Ward Councillors, decision makers and performing functions, such as overview and scrutiny (**this is referred to as the common law 'need to know' principle**). Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the Member to properly perform their duties as a councillor.

However, if the Member's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go off on a 'fishing expedition' through their council's documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See *R v. Clerk to Lancashire Police Committee ex parte Hook* [1980] Q.B. 603).



In such instances, the Chief Executive, Management Team, Section 151 or Monitoring Officers may request a Member to demonstrate their 'need to know'.

## 6. SCRUTINY

The rules and procedures governing Officer and Member responsibilities in support of the Council's overview and scrutiny function are set out in Part 5 of the Constitution.

## 7. WORKING WITH THE MEDIA

7.1 Information provided to the media is governed by the Local Government Act 1986 and the Code of Practice on Local Authority Publicity. In particular:

Information should be:-

- Objective, factual and informative
- Non-party political or designed to affect public support for a political party

7.2 The functions of the Council are discharged corporately and it is not, therefore, appropriate for public resources to be used to promote the views of individual Members. This does not preclude, in the interests of public accountability, publicity of the views of individual Members when they are representing the Council.

7.3 Press releases containing comments by individual Members are similarly acceptable practice. The Communications Manager will provide the press with factual information but comment will only be provided by Officers with the prior consent of the Chief Executive and/or the relevant Portfolio Holder/Cabinet Member or the relevant Committee Chairman.

7.4 The principle that the Council cannot use public resources at any time to promote the views or policies of a particular party is heightened during **election periods**. During the period just before elections there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, the so-called "purdah" period, is defined as beginning with the last date for publication of notice of the election. Prior to this period, guidance will be issued to both Members and Officers setting out the Council's own version of the convention in the period leading up to the elections.

# *Tendring* District Council



## MEMBERS' PLANNING CODE & PROTOCOL Updated February 2021

### **Background:**

The Members' Planning Code of Good Practice as originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interest. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

The drafting of the model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

This update takes into account the update to the Seven Principles of Public Life (the "Nolan principles") and commentary from the Committee on Standards in Public Life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on "Openness and Transparency on Personal Interests" published by the Department for Communities and Local Government in 2013.

For further reading please refer to "Probity in Planning" issued by the Local Government Association.

### **Introduction:**

**The aim of this Protocol: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.** One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Committee** is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Protocol applies** this Protocol applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.**

## 1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules and obligations giving effect to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- **Do** then apply the rules in this Members' Planning Protocol, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members Planning Protocol, you may put:
  - the Council at risk of proceedings on the legality of the related decision or maladministration; and
  - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

## 2. Development Proposals and Interests (as defined by the Code of Conduct)

- **Do** disclose the existence and nature of your interest as required by the Members' Code of Conduct.
- **Do take into account when approaching a decision** that the principle of Integrity is defined in terms that

"Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. **They must declare and resolve any interests and relationships**".

It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other

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- personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
  - **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
  - **Do** notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest or other personal conflict of interest and note that:
    - you should send the notification no later than submission of that application where you can;
    - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
    - you must not get involved in the processing of the application; and
    - it is advisable (but not mandatory) that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

### 3. Fettering Discretion in the Planning Process

(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind, when you come to make the decision, you
  - are entitled to have and to express your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. This is more than a matter of membership of both the proposing and planning

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determination committees, but that through your significant personal involvement in preparing or advocating that proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal on its planning merits.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or both a District and County Councillor), provided:
  - the proposal does not substantially affect the well-being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
  - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the seating area for members of the Committee for the duration of that item; and
  - ensure that your actions are recorded.

#### 4. **Contact with Applicants, Developers and Objectors**

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meetings with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Head of Planning or Planning Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any

particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee

- **Do** otherwise:
  - follow the Authority's rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Assistant Director (Planning) any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file [a proforma has been supplied to you for this purpose].

**In addition in respect of presentations by applicants/developers:**

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Committee of the Planning Authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

**5. Lobbying of Councillors**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward/division and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the Assistant Director (Planning) at the earliest opportunity.
- **Do** promptly refer to the Assistant Director (Planning) any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** declare that you have been lobbied on any particular matter at the Planning Committee when the application is being considered under the Declaration of Interests item of the agenda.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Protocol through:
  - Listening or receiving viewpoints from residents or other interested parties;
  - Making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision)
  - Seeking information through appropriate channels; or
  - Being a vehicle for the expression of opinion of others in your role as a ward/division Member.

## 6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby or promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.
- **Do** join general interest groups which reflect your area of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never indicate how Members should vote on a planning issue.

## 7. Site Visits/Inspections

- **Do** attend site visits organised by the Council, otherwise you will NOT be permitted to sit on the Committee for those items.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.

- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- The Chairman will open the formal site visit and invite Officers to point out relevant features of the site and its surroundings. The Chairman will then invite one at a time, from those present, in the following order:
  - the applicant;
  - local Ward Members; and
  - Town and Parish Councillors

to point out any relevant features of the site and its surroundings and raise any site-related issues that they wish to draw to the attention of the Councillors. Councillors will be able to see the physical features of the site and ask questions of any speaker. There will be no discussion of the merits of the case, and all questions from Councillors and other speakers must be put through the Chairman.

- The Planning Committee party will stay together as a group. No lobbying by applicants or objectors will be allowed at the site visit. If an applicant or objector(s) persist(s) in attempting to lobby, all Councillors and Officers will leave the site.
- **Don't** express opinions or views
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit.
  - you have first spoken to the Assistant Director (Planning) about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

#### **Exception to the Council's Local Practice of Undertaking Site Visits**

- Whilst it is the Council's standard local practice to undertake site visits, there will be exceptional circumstances, where an organised site visit is not possible.
- Site visits are not legally required for the determination of planning applications but forms part of local practice, which protocols must clearly set out. If a site visit cannot be organised, due to exceptional circumstances, a planning application can still be determined by the Committee, so long as the guidance issued by the Council is adhered to.



- Should circumstances prevail where the Council has had to determine it is not possible to organise a site visit, Members of the Committee will be issued with guidance by the Monitoring Officer, which is relevant to the particular situation arising. Such guidance will take into account health and safety risk assessments, current legislation and central government guidance, including that issued by the Planning Inspectorate and/or the Chief Planning Officer.
- Although this Protocol will not set out the guidance to be issued, being dependent upon the circumstances at the time, alternative arrangements will ensure the Principles of Planning in Probity are maintained and observed so as not to prejudice the Council's decision making."

#### 8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

#### 9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Assistant Director (Planning), which may be incorporated into any committee report.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Corporate Director or Assistant Director (Planning) or those officers who are authorised by their Corporate Director or Assistant Director (Planning) to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present at the entire debate, including the officer's introduction to the matter.
- **Do** have recorded the reasons for the Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to

the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 11. Training

- Members that have been nominated by their Group Leaders can act as a designated substitute member of the Planning or Planning Policy and Local Plan Committees. Any member of a political group is eligible to be a designated substitute member providing that they have received training in relation to planning matters under a continuing programme arranged by the Council.
- The Council provides training for Councillors on development control, local plan making and/or other planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover particular copies or to look at matters in greater depth. Training events are open to all Councillors and where places are limited, current members and named substitutes of the Planning and Local Plan Committees will take priority.
- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the organised training, reviewing a sample of planning decisions to ensure that Members judgements have been based on proper planning considerations.

**Adapted from the Guidance Produced by Lawyers in Local Government (LLG) and adopted by the Standards Committee December 2014 (amended pursuant to a delegation from the Standards Committee in September 2016).**

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**Members' Referral Scheme for Planning Applications****Guidance Note January 2022**

The Terms of Reference of the Planning Committee as set out in the Constitution delegates all planning and conservation matters to Officers except in relation to certain planning applications, which are for determination by the Committee. One of the exceptions listed is where Members request that an application should be referred to the Planning Committee. The wording is as follows:

- (vi) *Within 35 days of the commencement of formal consultation, a written request is received from a Tendring District Councillor in accordance with the Member Referral Scheme requesting that the application should be brought before the Planning Committee for determination giving material planning reasons for that request.*

**The MEMBER REFERRAL SCHEME is based on the following principles:**

- Elected Members represent their communities and the interests of their ward or of individual residents (in accordance with Article 2 of the Constitution);
- Planning Committee Members are involved in decision-making for the people of the district as a whole (in accordance with Article 2 of the Constitution – 2.03 (a) (v));
- The interests of a ward or individual residents can extend to consideration of planning applications submitted in adjacent wards and those where applications have been made which have a direct impact on other wards;
- A member of the Council's Cabinet may also be permitted to make representations and speak on any application but only if the proposed development has a direct impact on the portfolio for which the Cabinet member is responsible. The Leader of the Council must approve the Cabinet Member making representations to the Planning Committee and requesting the matter to be determined at Committee;
- If an elected Member requests an application to be referred to the Planning Committee for determination, they will be required to personally attend the meeting of the Committee to speak on the item. Planning Services will ensure that the Member is notified when the application is scheduled for determination;
- The Members' Referral Scheme does not apply to a householder application, which is defined as follows:

*"A 'householder' application is an application to enlarge, expand, improve or alter an existing dwelling, to put up a boundary wall of fence for an existing dwelling or carry out an operation in the curtilage of an existing dwelling that is ancillary to the dwelling-house".*

- Members are requested to use the attached letter when referring an application to the Planning Committee to be determined, for ease of reference;

Date: 24<sup>th</sup> January 2022

Chairman of the Planning Committee

**LETTER TO THE DIRECTOR (PLANNING)**

Date:

Dear Director (Planning),

**MEMBER REFERRAL SCHEME: PLANNING APPLICATION REF: .....**

(\* ) I am the Ward Councillor for **[insert the Ward]** and in representing the community\*/the interests of the ward\* or of individual residents\* request the above-mentioned application is referred to the Planning Committee for determination. The planning application is located within:

- (a) the Ward to which I am elected to(\*); or
- (b) is adjacent to the Ward to which I am elected to(\*); or
- (c) directly impacts the Ward to which I am elected to because (\*)

.....  
in respect of (b) and (c), I can confirm that I have notified the relevant Ward Councillor(s) of my intention to refer this application to the Committee for determination.

(\* ) I am the Cabinet Member for [insert responsibility] and the proposed development has a direct impact on the portfolio for which I am responsible. The Leader of the Council has approved representations being made to the Planning Committee.

(\* ) I am a current serving member of the Planning Committee and the proposed development could be considered of significant importance to the wider district or policy because ..... The Planning Committee Chairman has been consulted and approves this matter being determined by the Planning Committee. By making this request I confirm that I am not predetermined and will approach the decision making with an open mind and therefore have not highlighted any relevant material considerations below.

The referral is because of the following material planning considerations (and for the reasons set out hereunder):-

- In line with/potentially contrary to\* the development plan (Local Plan/LDF) or Government Guidance (please state relevant policies if known)**
- Negative/Positive\* impact on urban design/street scene**
- Highways impact and/or other traffic issues**
- Good/Poor\* layout and/or density issues**
- Flood Risk**

(Grey)

**Positive/Negative\* Impact on neighbours**

**Other material considerations as follows.....**

.....  
.....  
.....

My reasons for the referral are as follows:-

If officers are minded to approve/refuse\* then there is no need for this application to be referred.

Please ensure that I am notified of the date of the committee meeting at which this application will be considered so that I am able to attend and speak on the item.

Yours faithfully,

**Councillor .....**

\* Delete as appropriate.

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**TENDRING DISTRICT COUNCIL'S PROTOCOL  
FOR CABINET AND OVERVIEW & SCRUTINY ROLES**

**1. Introduction**

- 1.1 The counterpart to operating Cabinet arrangements within a Council is the provision of Overview & Scrutiny functions. You cannot have Cabinet arrangements without its counterpart.
- 1.2 Overview & Scrutiny has the following powers in law:
- (a) to scrutinise any decision made by the Cabinet,
  - (b) to make recommendations to the Council/Cabinet with respect to functions/responsibility of the Cabinet,
  - (c) to scrutinise decisions made by non-executive functions of the Council
  - (d) to make recommendations to the Council/Cabinet with respect to the non-executive functions/responsibilities,
  - (e) to make recommendations to the Council/Cabinet on matters which affect the Council's area or the those living there.
- 1.3 The Council's Constitution sets out how those powers are to be managed and the standards Members and Officers will adhere to. The purpose of this Protocol is not to repeat the Constitutional Articles, Rules and Procedures but to focus on how the relationship between the roles of Cabinet and Overview & Scrutiny will be exercised.
- 1.4 Officers must act with political impartiality, serving the whole council rather than particular groups or members; as such they serve the Members of the Cabinet and of the Overview & Scrutiny Committees equally.
- 1.5 In operating its Overview & Scrutiny functions, the Council will have regard to the statutory guidance for this function. This Protocol is one of the measures the Council has adopted to address the following statement in the statutory guidance:

*"Effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee."*

**2. Application of the Protocol**

- 2.1 In utilising its powers in 1.2, Overview & Scrutiny will act as a 'critical friend' to the Leader and Cabinet.
- 2.2 This Protocol applies to all members of Overview & Scrutiny Committees, any Member who may sit on a Scrutiny Task and Finish Group, the Leader of the Council and all Members of the Cabinet.
- 2.3 All Members will promote the legitimate role of Overview & Scrutiny as outlined in 1.2 above.

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- 2.4 All Members must have regard to the Corporate Plan adopted by Council and its capacity and resources to deliver services efficiently, effectively, to achieve value for money and outcomes. Overview & Scrutiny Committees will be mindful of this in its work planning.

### 3. Trust

- 3.1 All Members should promote an atmosphere of openness at Overview & Scrutiny Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust.
- 3.2 Overview & Scrutiny Members need to trust that Cabinet Members are being open, honest and fulsome when participating in the enquiries being undertaken.
- 3.3 Cabinet Members need to trust Overview & Scrutiny Members with information and to trust in their views.
- 3.4 While Members on the Overview & Scrutiny Committees will come from different political groups including those not aligned with a registered political party, the public must trust that they will act with an independence in determining the work programme of the Committees and in undertaking enquiries identified in the work programmes.

### 4. Policy Development and Pre-Decision Scrutiny

- 4.1 The value of early input from Overview & Scrutiny into policy development is recognised. Through early consultation, Overview & Scrutiny can act as a sounding board and a think tank in enquiring into issues coming up on the horizon, bringing in added value. The Leader and Cabinet Members (as well as Officers) will draw to the attention of the relevant Overview & Scrutiny committee, policies and strategies that are being developed or are due for review to enable Overview & Scrutiny to build this into their work programme and thereby have a timely input.
- 4.2 All policy development will be carried out in a way to promote inclusive dialogue and to capture views of Members' with a report submitted to the relevant Overview & Scrutiny Committee for consideration by the appropriate Member of Cabinet. The Cabinet and relevant (Assistant) Director will consider the views of Overview & Scrutiny members in the development of the policy and provide a response to the Overview & Scrutiny Committee on the recommendations. The detail of the Overview & Scrutiny involvement shall also be included within the body of the report to Cabinet. The Cabinet/Full Council will continue to be responsible for approving and adopting policy whether this accepts all, some or none of the recommendations from Overview & Scrutiny.
- 4.3 Cabinet Members may wish to request views from Overview & Scrutiny Members on an individual decision before it is taken. The Cabinet Member will be responsible for circulating the details to the relevant Committee Members, through the designated Scrutiny Officer. Utilising this as an option does not exclude the decision from being subject to call-in, however, it will give the Cabinet Member the ability to consider different views and perspectives of a decision to be taken before it is taken.



- 
- 4.4 Like all parts of the Council, Overview & Scrutiny only has a certain capacity and cannot scrutinise everything. It is for Overview & Scrutiny to determine its work programme, in an informed way, and the views of Cabinet are always welcome. Just as Cabinet is not required to accept all recommendations from Overview & Scrutiny on enquiries undertaken, Overview & Scrutiny is not required to accept recommendations from Cabinet concerning the work programme of the Committee. Both should actively consider the other's recommendations and set out reasons for its decision. Both share the ambition of quality public services for residents in, businesses of and visitors to the Council's area.

## 5. Holding the Cabinet to Account

- 5.1 A key role of Overview & Scrutiny is in holding the Cabinet to account for decisions taken and performance of services. In holding the Cabinet to account Overview & Scrutiny Members will:
- Consider decisions taken by the Cabinet, individually and collectively and items on the Notice of Forthcoming Decisions through formal Overview & Scrutiny Committee meetings;
  - Review service performance and performance against policy and targets;
  - Respect the 'safe space' required by Cabinet Members and senior officers to think freely and offer frank advice to each other (and to receive the same) as they formulate substantial changes to services, responses to important pressing issues or pursue intense negotiations to resolve disputes.
  - Be prepared to ask searching questions that provide a constructive challenge for the purposes of undertaking the Overview & Scrutiny function and not solely for individual information gathering purposes;
  - Be positive and respectful in their interactions with Cabinet Members. This will include being clear whether the Cabinet Member is specifically invited, sending invitations in a timely way, acknowledging the attendance of the Cabinet Member at the meeting and allowing the Cabinet Member to address the Committee and respond to questions;
  - Respond positively to a Cabinet Member if that Member wishes to attend a particular meeting for a given item and they have not been formally invited to confirm whether an invitation is to be extended to them to attend.
  - Represent (and amplify) the voices of the public;
  - Listen to the responses provided and to assist the Cabinet in identifying areas for further consideration and improvement, where necessary;
  - Recognise that not all reviews require recommendations back to Cabinet, if the Overview & Scrutiny Committee were satisfied with the subject matter under consideration
- 5.2 In return, Cabinet Members will:
- Be willing to be open, honest and engaged in providing responses to constructive challenge and, where 'safe space' to give/receive frank advice is required, what time frame that will be needed for that 'safe space', subject to resources and Officers time;
  - Value the importance of Overview & Scrutiny;
  - Be supportive of the Overview & Scrutiny process and invite and seek opinion from Overview & Scrutiny Members on decisions to be taken, where appropriate;
  - Provide a positive contribution to scrutiny meetings;
  - Attend meetings when invited to do so to answer questions and present information:
    - ✓ By way of a direct answer
    - ✓ By reference to published publications

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- ✓ By referring a matter to an officer in attendance, if they are not able to respond
  - ✓ If an answer cannot immediately be given, by providing a written answer within five working days unless it is not reasonable to do so. If considered unreasonable, an explanation as to why will be given.
  - ✓ A combination of the above options.
- Depart the Overview & Scrutiny Committee meeting when that Committee expresses a wish to deliberate on a matter after hearing from the Cabinet Member.
- 5.3 Continuing dialogue should underpin Overview & Scrutiny enquiries. As such, pre-meetings (or other communication) between Cabinet Members and the Overview & Scrutiny Committee Chairman is encouraged about a forthcoming enquiry. Where possible, Overview & Scrutiny Committee Members will be encouraged to pass questions on the subject of the enquiry to the Cabinet Member/relevant Officer or outside representative in advance of a Committee meeting. As identified elsewhere, after the meeting and where recommendations are made to the Cabinet there should be a discussion between the Cabinet Member and the Chairman of the Overview & Scrutiny Committee.
- 5.4 The purpose of any pre-meeting (or other communication) referred to above involving a Cabinet Member is not to replace consideration of any agenda item at the published formal meeting, as it is only this setting which the formal business of the Committee can be undertaken.

## **6. Budget setting and monitoring - The importance of scrutiny**

- 6.1 Budget scrutiny must also be carried out on a rolling programme. Quarterly throughout the year proactive scrutiny assists to inform the next financial year's budget and long term forecast, work can involve:
- Challenging how the budget has been constructed before it is agreed. In particular, probing any assumptions that lie behind the executive's budget strategy, i.e. is the approach incremental or is it starting from a base budget, what are the main savings proposals, how will any growth be funded, are the financial implications of proposals from departments or committees built into the overall budget and has an appropriate level of reserves been set?
  - Carrying out budget monitoring activity, for example in areas where expenditure against budget looks to be well above or below forecasts and where growth/savings targets and revised forecasts are involved.
  - Undertaking some evaluation of performance and value for money including how it aligns to the Council's Corporate Plan and Priorities.
  - Maintaining a 'big picture' view of the financial pressures affecting the council and continuously challenging how these might impact on existing budgets and budget setting in subsequent years.
- 6.2 It is important to ensure that this work is undertaken throughout the year and not left until the last Budget Report to Overview and Scrutiny Committee, which is for the final consultation purposes prior to Cabinet's recommendations to Full Council. There is insufficient time to properly respond to the proposals or matters raised, due to the statutory timetable to set a budget. The Overview & Scrutiny function in this important process must be timely and add value, at the point Cabinet recommends its detailed budget proposals including the setting the level of Council Tax increase, the comments received from Overview and Scrutiny during the

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year will be regarded. The Council's Budget & Policy Framework Procedure Rules sets out the Process for Developing the Budget.

## **7. Performance Measurement and Reporting**

7.1 Measures of performance provide insight into whether value is being achieved and whether improvements are necessary, feasible and affordable. An open sharing of performance data will take place across the Council; including between Cabinet and Overview & Scrutiny. The purpose of reporting general performance data to the Overview & Scrutiny Committee is so that it can undertake scrutiny of it in so far as:

- (a) Is the performance monitoring system capturing the right level of data to support delivery of services – and to make recommendations thereon; and
- (b) Is there performance as identified in the monitoring data that warrants further enquiry of an activity – and to determine whether and how that enquiry should take place; including it as appropriate in the work programme for that enquiry.

7.2 When enquiring into an individual service or subject, Overview & Scrutiny Committee Members will consider the performance measurements available. They will naturally assess whether this aligns with your own research; particularly the experience of service-users.

7.3 When considering the performance against the Cabinet's approved annual priority list of actions against the Corporate Plan Themes, Overview & Scrutiny will not normally seek to use the process to question that approved list of actions during the year. There are other Council procedures that can and should be used if there is a compelling need to review those actions. Overview & Scrutiny may legitimately have a view on what the annual priority list of actions should be the following year and these can be set out in recommendations to Cabinet.

7.4 Where a service of the Council is being delivered by a third party/outside company or where the matter under enquiry is the responsibility of a partner organisation, they will be encouraged to respond to enquiries from Overview & Scrutiny Committees relevant to the service/enquiry. This will include their own performance data.

## **8. The Inter-relationship between Cabinet, Audit and Overview & Scrutiny**

8.1 It is important that Cabinet receives clear advice within the respective responsibilities of the Overview & Scrutiny Committees and the Audit Committee. It is therefore equally important that the formal audit role of the Audit Committee is left to that Committee. Areas in which financial scrutiny can add value, complementary to the work of the Audit Committee, including the following according to the Local Government Association:

- Reviewing draft (medium-term) financial plans
- Monitoring internal and external audit reports, in order to identify areas where further scrutiny may be beneficial
- Responding to requests from the public for greater clarity on the council's finance and spending plans
- Periodically carrying out post-implementation reviews of large (in terms of revenue or capital) projects
- Challenging decisions related to new service commitments, investments, and previously unbudgeted demands

- 
- Scrutinising the financial implications of greater partnership working
  - Keeping a regular 'watching brief' on important matters affecting general resource management.

8.2 The above matters will inform the work planning of Overview & Scrutiny of Council functions and those of partners.

8.3 Cabinet, Audit and Overview & Scrutiny Committees will be guided by advice from the Council's Section 151 Officer on the boundary of responsibility between Audit and Overview & Scrutiny.

### **9. Overview & Scrutiny Work planning**

9.1 Around the start of each Municipal Year, the Overview & Scrutiny committees will hold a work planning workshop. As part of this workshop the views of the relevant Cabinet Member(s) will be inputted alongside the views received from others. The Cabinet's adopted priorities in support of the Corporate Plan will be considered, areas of planned policy development over the relevant Municipal Year (and the next) will be provided and they will be asked to highlight any areas where overview & scrutiny may be specifically invited to assist in work (including Community Leadership areas).

9.2 The Chairmen and Vice-Chairmen of the Overview & Scrutiny Committees will meet quarterly with representatives of the Cabinet in order to ensure ongoing opportunities for Cabinet input into Overview & Scrutiny Committee work plans, ongoing opportunities for Overview & Scrutiny to input into Cabinet policy development or to address performance issues and to build on the positive working relationship between the two functions.

9.3 Overview & Scrutiny Committees may legitimately expect to receive a written report with relevant details for each item on its work programme and, where possible, this report should always be circulated with the agenda for the meeting.

### **10. Overview & Scrutiny Recommendations to the Cabinet**

10.1 Overview & Scrutiny Committees may make recommendations to the Cabinet on functions the Council is responsible for through a formal committee meeting or, say, by way of a Task & Finish Group's Final Report.

10.2 Upon receipt of a recommendation from Overview & Scrutiny, Cabinet Members will:

- Give due consideration to any recommendations or views expressed;
- Provide an explanation for the reasons why recommendations made by Overview & Scrutiny have or have not been pursued.

10.3 Once approved by the relevant Overview & Scrutiny Committee, the views of the Cabinet Member on any recommendations will be sought and included within the report. The Chairman of the Overview & Scrutiny Committee/Task & Finish Group will have the opportunity to meet with the relevant Cabinet Member(s) to discuss the recommendations and the response to those recommendations. The Final Report will then be submitted to the Cabinet for consideration. Should any of the recommendations not be approved or be only partially supported, the Cabinet will provide details of the reason why. The response of

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Cabinet to recommendations will be reported to the next available meeting of the Overview & Scrutiny Committee.

### **11. Urgent Items of Cabinet Business**

- 11.1 The Chairman of the appropriate Overview and Scrutiny Committee may be requested to consent to certain decision being taken by the Cabinet/a Cabinet Member if there is an urgent decision needing to be taken and, due to that urgency, the required notice cannot be given and/or the normal call-in procedures of a decision cannot be applied. The Committee Chairman will consider each request and will not unreasonably withhold consent where the purpose of granting consent is in accordance with the legislative provisions and thereby permit the urgent decision to be made. Notice of the urgency reasons and the consent of the Committee Chairman will then follow.

### **12. Scrutiny Consideration of Confidential Decisions**

- 12.1 Overview & Scrutiny Committee Members have a right to access exempt information supporting decisions that have been taken in order to allow an effective enquiry of the decision. Should an Overview & Scrutiny Member wish to ask questions at a public Committee meeting around an decision that itself is exempt from publication or is based on information that is so exempt, the press and public may be excluded in accordance with the Council's Constitution and the Cabinet Member will be expected to answer in an open and transparent manner. The exempt information will remain confidential and all elected members and officers who receive that information shall maintain that confidentiality in line with the codes of conduct for Elected Members and Officers.

### **13. Call-in**

- 13.1 Following the mediation process provided for in the Constitution, and on the basis of a continuing call-in situation, Cabinet Members will be expected to attend any meetings of Overview & Scrutiny committees at which a call-in request in relation to their area of responsibility is being considered. Summarising the requirements of the relevant Procedure Rules in the Constitution, if the relevant Cabinet Member cannot attend, the Leader, should attend in their absence or designate another Cabinet Member to do so. The purpose of their attendance will be to present the decision and the basis for it and to answer questions of fact. The following procedure will take place where call-ins are being considered:
- i. One of the Members who called in the decision will speak first.
  - ii. The Chair will invite the Cabinet Member (decision maker) to respond.
  - iii. The Committee will then ask questions of the decision maker, who may ask a relevant officer to supply further information if necessary.
  - iv. The Committee debates the issue and votes on the outcome.

### **14. Councillor Call to Action**

- 14.1 Cabinet Members will be invited and expected to attend any meetings of Overview & Scrutiny Committees at which a call to action request in relation to their area of responsibility is being considered. A similar process will apply as outlined for Call-In decisions referred to earlier.

- 14.2 Overview & Scrutiny Committee members are not entitled to draft materials while policy is being developed unless the Cabinet consults the relevant Overview and Resources Committee through the formulation of policy. This is to ensure resources are used in an efficient manner. Cabinet Members and Officers are expected to ensure the Schedule of Forthcoming Decisions is up to date and accurate to assist with this for work programming purposes.

### **15. Ensuring Compliance with the Protocol**

- 15.1 The Head of Democratic Services & Elections (in his role as the designated Scrutiny Officer) and the Assistant Director of Governance (in their role as Monitoring Officer) will be responsible for overseeing compliance with the Cabinet/Overview & Scrutiny Protocol which should be used by Members to support the wider aim of supporting and promoting a culture of overview & scrutiny. The success of the protocol will be determined by:
- Recognition of the value of overview & scrutiny;
  - A clear record of constructive challenge;
  - Valuable Overview & Scrutiny reviews that achieve outcomes;
  - An open and accountable decision making process.
- 15.2 With due regard to the Council's Statement on Council development, training will be made available for those on Overview & Scrutiny Committees and those in the Cabinet on this protocol and elements referenced in it including work planning, budget scrutiny, using performance data and key lines of enquiry.
- 15.3 In the Overview & Scrutiny Annual Report submitted to Full Council each year there will be a section demonstrating the impact of Overview & Scrutiny and effectiveness of the Protocol.
- 15.4 All Members have agreed to adhere to the Council's Policies and Procedures through the Members' Code of Conduct. Any Member who considers the principles of this Protocol had been compromised will raise the issue with the Leader or relevant Chairman of the Overview & Scrutiny to seek resolution in the first instance. Where appropriate, the Group Leader will be notified. In circumstances, where a suitable resolution has not been reached between Members, the matter can be raised with the Monitoring Officer.
- 15.5 Any concerns regarding the behaviours between Members and Officers will be dealt with in accordance with the Member Officer Relationship Protocol.

**Tendring**  
District Council



**PROTOCOL FOR WEBCASTING OF FORMAL  
COUNCIL MEETINGS AND FOR PUBLIC  
FILMING AND RECORDING OF MEETINGS**

This protocol is provided to assist the conduct of webcasting and other filming/recording of meetings and to ensure compliance with its obligations under the Openness of Local Government Bodies Regulations 2014, Data Protection Act 2018 and the Human Rights Act 1998.

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## Webcasting of public council and committee meetings

### Introduction

Tendring District Council is committed to being open and transparent in the way it conducts its business. Most formal meetings of the public are open to the public to attend and there are schemes covering the submission of petitions and questions to the Council meetings as well as schemes for public speaking at meetings of the Planning Committee. However, some residents may not be able to attend the meetings they are interested in. To ensure that those residents can still engage in the democratic process, the Council films and streams, live, many of its meetings ('webcasting'). These can then be watched online as the meeting happens or up to 24 months after the meeting (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). In addition to the webcasting service provided by the Council, there are additional legal rights for the public to attend all of our formal public meetings and film, photograph, audio record or report from the meeting using social media or any other means (subject to it not being disruptive). These rights are explained below.

### Which meetings are webcast?

The Council aims to webcast all its formal meetings to which the public have a right to attend. This includes meetings of its Council, Cabinet, Planning Committee and other committees.

### How do we webcast and how long will the recording be available?

Cameras will be located in the Council's Committee Room at the Town Hall/Princes Theatre to provide the webcasting facility. The Council may also hold hybrid meetings, where some participants join the meeting remotely through a video link. The webcast of meetings will be available on the Council's website for a period of up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year) and, after that, the recordings will be deleted.

In so far as individuals can be identified visually on a webcast or they can be heard in a recording, Tendring District Council will use that personal information as part of its official authority/public task and in order to promote engagement, service delivery and democratic responsibilities.

When individuals partake in a meeting that is webcast, the Council may share their information with Elected Members, other Tendring District Council Services, other individuals involved in the meeting and the public through its webcast service. We may also provide your information to our suppliers to enable us to deliver this service.

Anyone who does not give their consent to be filmed/recorded as part of a meeting to which this protocol applies must specifically request the Council's Monitoring Officer for an exception to be made in advance of the meeting. The Monitoring Officer will take a view on a case-by-case basis on whether there is sufficient justification for making an exemption.

In relation to these matters, the Council will normally not show camera footage of members of the public who address the formal meeting of Council, Cabinet or a Committee when presenting petitions, asking questions or as part of a public speaking scheme of the Council.



Audio of their contributions will be webcast and recorded. However, the camera will, during such public involvement in meetings record either a wide angle view of the Councillors attending or of the Chairman of the meeting. A statement to the effect that a member of the public is speaking shall be displayed on the webcast/recording where this is possible by way of explanation of the audio and video element of the webcast/recording at that time.

In addition to the above, the webcast/recording shall normally not show camera footage of the press and public gallery and those there. It cannot be guaranteed that no footage will be webcast or recorded, however, efforts will be made to minimise or avoid entirely that footage.

### **Are there any meetings or parts of meetings which the Council may not webcast?**

Tendring District Council wants to make sure meetings are webcast as far as possible to ensure full engagement with the public. However there are instances where it may not be appropriate to webcast a meeting or parts thereof, for example:

- **When an individual, who is presenting at a public meeting, specifically requests not to appear on the public webcast, and we agree with the request.** We will always seek to accommodate such requests and work with that individual to agree an approach that is satisfactory to all parties. Any such part of a meeting that has not been broadcast will not appear online or be available following the meeting. If you are watching from home you will see a notice appearing on the screen to let viewers know what is happening. If you object to appearing in the webcast, you should make this known in writing prior to the meeting by emailing [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk) and we will contact you to discuss further.
- **In considering whether or not to record contributions by children at meetings** the Council will, for those aged 16 or over check with the young people themselves that they are content to be filmed and, subject to that, record and broadcast them. For children younger than 16, or those who are otherwise thought vulnerable, we will record only with the consent of the appropriate parent or guardian. If we are in any doubt we will stop the webcast whilst children are speaking. If the children are attending as part of an event involving stakeholder(s) (for example, a school or schools), the Council will expect the stakeholder(s) to have procured the necessary parents' consents.
- **When Councillors at a meeting pass a resolution to exclude the press and public because there is likely to be disclosure of exempt or confidential information.** The Council will always try to conduct its business in public, however from time to time the press and public may be excluded from meetings in accordance with the rules set out in legislation and the Council's Constitution. You will be notified if watching from home that the webcasting has ceased for this part of the meeting and why. The Chairman of the meeting will be asked to confirm that webcasting has stopped before starting to discuss exempt or confidential information.
- **Rights of the public to film, record and photograph at any meeting**

In addition to the webcasting of meetings hosted by the Council, by law the public also has a right to (subject to it not being disruptive):

- Film, photograph or audio record a meeting or any part thereof
- Use any other means (e.g. tweeting, blogging etc.) to enable those not present to see or hear proceedings as they happen or later
- Report or provide commentary of the proceedings so that the reporting or commentary is available as the meeting takes place or later

### **Why does the Council allow the public and press to film, record and photograph its meetings?**

In 2014, the Openness of Local Government Regulations came into force. This enabled the public to report from all local authority public meetings, in a bid to increase transparency and openness in local decision making.

The provisions only apply to meetings of the Council held in public. You may not film, record or use social media to report from any of the Council's meetings which are private or not open to the public.

Full details of the right of the public to film, record and use social media to report from a meeting, including the exemptions mentioned above, can be found in the [guide](#) issued to accompany these regulations.

### **Are there any other restrictions if I want to report from a meeting?**

You do not have to ask us permission in advance to film, record, photograph or report from the meeting using social media. However, we do ask that you respect the following when recording and otherwise reporting from a meeting of the Council:

- Please do not film, photograph or report the views of children, young people, vulnerable people and other members of the public who actively object to being filmed or photographed
- Beware that the common law applies – for example laws on public order offences and defamation
- Please exercise your right to freedom of speech with responsibility – this means respecting the views of others when reporting from a meeting and not disrupting the proceedings
- Please do not edit your filming or recording of the proceedings in a way which may lead to misinterpretation
- Please show respect for those that you are filming or reporting on
- Remember you are only permitted to film, record, photograph or report from the public meeting itself (i.e. from the time it is called to order to the time it concludes). Activity and discussion before or afterwards does not fall within the scope of the regulations
- Filming, recording, photographing or reporting is only permitted of the meeting, not of the public gallery

### **Signage of webcasting and other filming and recording at meetings**

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Agendas relating to meetings that may be webcast will include a statement to alert the public to the webcast as well as the rights of the public generally to film, record, photograph and use social media to report from the proceedings, as follows:

**WEBCASTING NOTICE**

**This meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be filmed, except where there are confidential or exempt items, and the footage will be on the website for up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). A copy of it will also be retained in accordance with the Council's data retention policy.**

**The Council will seek to avoid/minimise footage of members of the public in attendance at, or participating in the meeting.**

**In addition, the Council is obliged by law to allow members of the public to take photographs, film, audio-record, and report on the proceedings at public meetings. The Council will only seek to prevent this should it be undertaken in a disruptive or otherwise inappropriate manner.**

**If you have any queries regarding webcasting or the recording of meetings by the public, please contact Democratic Services on [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk)**

The Chairman of the meeting will also make an announcement at the beginning of the meeting to make sure everyone understands that the meeting will be webcast and that they may also be filmed by others in the Chamber.

**Social Media comments during webcasting**

The Council may use generally available platforms to show its webcast footage. When it does so, and if the platform allows for comments to be made by viewers, the Council will provide a message to make it clear that it does not monitor comments and there is no facility to pass those comments on to the attendees of the meeting.

**Other provisions****Webcasting**

The Chairman of the meeting has the discretion to request the termination or suspension of the webcast if continuing to webcast would prejudice the proceedings of the meeting.

This would include:

- (i) Public disturbance or other suspension of the meeting;
- (ii) Exclusion of public and press being moved and supported;
- (iii) Any other reason supported by the Council/Committee.

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Archived webcasts or parts of webcasts shall only be removed from the Council's website if the Monitoring Officer considers that it is necessary because all or part of the content of the webcast is, or is likely to be, in breach of any statutory provision or common law rule, for example Data Protection and/or Human Rights legislation or provisions relating to confidential or exempt information. There may also need to be a temporary removal of webcasts while allegations of breaches are investigated. It is anticipated, however, that meetings will be conducted lawfully and that the need to exercise this power will occur only on an exceptional basis.

ny elected Member who is concerned about any webcast should raise their concerns with the Head of Democratic Services and Elections.

**Other filming, recording, photographing or the use of social media for reporting from the meeting**

The Chairman of the meeting has the absolute discretion to terminate or suspend filming, recording and use of social media by members of the public during a meeting if, in their opinion, the activity:

- is disrupting the meeting and impeding good decision making;
- is infringing the rights of any members of the public;
- is in danger of repeating a defamatory statement that has been made.

### INTRODUCTION

#### 1.1 The Scheme and Title

In exercise of the powers conferred on Tendring District Council under the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) the following Scheme of Allowances ("the Scheme") has been approved by the Council, having taken due account of the recommendations of its Independent Remuneration Panel.

The Scheme may be cited as the "Tendring District Council Members' Allowances Scheme", and will be effective from 1<sup>st</sup> May each year until subsequently amended by the Council.

#### 1.2 Annual Review

In accordance with the above regulations the Scheme payments will be reviewed annually. The review process will involve:-

- Scrutiny by the Independent Remuneration Panel (IRP) of the ongoing and future role and workload of Members and review of the allowances and amounts paid to Members;

OR

- Application of an appropriate agreed indexation allowance for up to a maximum of 4 years
- The IRP will then make recommendations to the Council in respect of payments considered to be appropriate for subsequent years.

See Appendix 2 for the current scheme and most recent decision by Annual Council.

#### 1.3 Definitions

In the Scheme:-

"Councillor" or "Member" means an elected Member of Tendring District Council

"Year" means the year (or part year) ending at the annual Full Council meeting

### 2.0 THE STRUCTURE OF THE SCHEME

#### 2.1 Member Involvement

This Scheme has been established in a way that reflects the responsibility and time commitment required from Members in the discharge of their duties. It acknowledges their duties to ward constituents, fellow councillors, the population as a whole and to organisations outside the

Council. The extent of these responsibilities, and the commitment they require, is reflected in the extent to which a Councillor is remunerated.

These duties also include undertaking development/training opportunities provided.

### **2.2 Basic Members' Allowance**

Basic Allowance is a flat rate payment made to all Councillors in recognition of their time commitments, including such inevitable calls on their time as meetings with officers and constituents and attendance at political group meetings. It also covers incidental costs such as the use of their homes, telephone costs and peripheral costs such as paper, printer cartridges etc. except that headed paper and business cards will be provided by Tendring District Council on request. The same level of Basic Allowance is paid to all councillors.

This Allowance seeks to ensure that the time and effort taken by Councillors to participate in general core training is recompensed.

### **2.3 Special Responsibility Allowance**

Special Responsibility Allowances will be payable to those councillors who hold positions with additional special responsibility.

Payment to the Leader(s) of Group(s) will also be considered.

The amount of Special Responsibility Allowance (SRA) payable will vary according to the position held, duties undertaken and the level of responsibility involved.

The Allowances seek to also reflect participation in Mandatory Training for particular roles and encourage others to participate in training (e.g. a Committee Chairman).

### **2.4 Childcare and Dependant Carers' Allowance**

The Regulations make provision for the Scheme to include payment of a Childcare and Dependant Carers' Allowance to those councillors who incur expenditure for the care of children or dependant relatives whilst undertaking official duties.

Allowances are also made available to Members who have an express need. The express need shall be in the form of a written declaration by a Member that needs to be lodged with the Head of Democratic Services & Elections.

### **2.5 Travel and Subsistence Allowance**

Travel and Subsistence Allowances are also approved by the Council following consideration of recommendations made by the Independent Remuneration Panel in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003.

Travel and Subsistence payments will be made in accordance with the laid down rates in respect of councillors' duties and in respect of approved attendance on approved outside bodies. Rates approved by the Council, following consideration of the recommendations of the Independent Remuneration Panel are set out in Appendix 2 to this Scheme.

Claims for travel and subsistence costs incurred by Councillors to undertake designated official duties in the District shall be remunerated only in respect of travel (and travel/duty time) within the District.

Claims for travel and subsistence submitted to Democratic Services & Elections by the 2<sup>nd</sup> working day of each month will be paid in that month otherwise they will be paid the following month. Members should aim to submit claims the month after the mileage etc has been incurred in order to assist effective budgetary control and ensure proper treatment within the correct tax year (in compliance with HMRC requirements). Members will be reminded before the end of the tax year to submit claims relating to that year.

#### **2.6 Attendance at Meetings and Conferences**

This allowance is paid in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003. As with travel and subsistence, claims submitted to Democratic Services & Elections by the 2<sup>nd</sup> working day of each month and will be paid in that month otherwise they will be paid the following month.

#### **2.7 Pensionability of Posts**

The Local Government Pension Scheme does not allow councillor posts to be pensionable.

#### **2.8 Allowances for the Chairman and Vice-Chairman**

Payment of Allowances to the Council's Chairman and Vice-Chairman are permitted by virtue of Sections 3 and 5 of the Local Government Act 1972 (as opposed to the Local Authorities (Members' Allowances) (England) Regulations 2003). For completeness, in respect of Allowances for Councillors, the Allowances for the Chairman and Vice-Chairman are included in this Scheme for reference.

#### **3.0 CLAIMS AND PAYMENTS**

The Scheme will be administered in a way that meets the need for both simplicity and transparency. The following procedures are intended to achieve such objectives.

- 3.1** There is an expectation that no Councillor will be eligible to claim more than two separate Special Responsibility Allowances. Where a Councillor is eligible for more than two such allowances they may make the specific case to the Head of Democratic Services and Elections (on behalf of the Chief Executive) to seek the views of the Independent Remuneration Panel as

to whether that further Allowance may be paid. The views of the Panel will then be reported to a meeting of the Council to determine whether the further Allowance shall be paid.

### **3.2 Documenting Entitlement to Allowances**

Following the four yearly local elections and the subsequent Annual Council Meeting at which positions on the Council are filled the annual remuneration entitlement in respect of each Councillor will be calculated and documented.

Details will be included on a Schedule of Members' Commitments form (Appendix 1), that will form part of each Member's Declaration of office and which will provide a public record of an individual's responsibilities and commitments. These documents will be retained within the Council and will be used to determine the basis of each Councillor's monthly payment through the Council's payroll system.

Any changes to members' allowances subsequent to this will be documented separately and individual Schedules of Members' Commitments will not be updated.

### **3.3 Payment**

Payment of allowances will be paid to each Councillor in arrears in twelve instalments on the 20<sup>th</sup> of each month (or nearest working day thereto).

### **3.4 Changes/Part-Year Entitlement**

Councillors may, during the course of a year, take up or relinquish a position or role identified within this scheme which alters their entitlement to allowances. In such circumstances their entitlement will be adjusted on a pro-rata basis. Councillors should notify the Head of Democratic Services & Elections of such changes as soon as they are known.

If a Councillor's term of office starts or ends other than at the commencement or end of the normal municipal year, entitlement to such remuneration as their responsibilities and commitments attract will also be calculated on a pro-rata basis.

The revised allowance will apply from the day on which the change occurs.

### **3.5 Option to Forgo Allowances**

A Councillor may decide to forgo all or part of the allowance due to him/her. In such circumstances the Head of Democratic Services & Elections should be notified in writing of such decision.

Once in place, limited or non-payment will continue until revoked in writing by the Councillor concerned (NB such revocation shall not be backdated).



### 3.6 Verification of Travel and Subsistence

In order to maintain the transparency of the scheme, a list of “approved” duties that attract entitlement to travel and subsistence will be maintained and all claims will be verified against this list before payment is made with non-compliant claims being removed.

### 3.7 Members Responsibility for Reporting Receipt of Allowances

Members are advised to declare the receipt of a members allowance if **any form** of benefit such as income support or housing benefit is being claimed. The rules on how members' allowances are treated may vary depending on the benefit claimed and advice should be sought from the relevant administering body. For example the rules for those in receipt of Housing Benefit and Council Tax Benefit state that “basic members allowance, special responsibility allowance and conference attendance allowance are treated as earnings except for any expenses which have been wholly, exclusively and necessarily incurred in the performance of their duties”. Members are therefore advised that in order to claim expenses in these circumstances receipts and records to justify the expenses incurred must be kept.

### 4.0 APPROVED DUTIES

The power “to appoint member representatives to attend meetings of appropriate outside bodies” is delegated in Part 3 of the Constitution to the Leader/Portfolio Holders and to Committees with regard to the functions within their jurisdiction. Otherwise such appointments are made by Council at a meeting.

#### 4.1 Approved Duties for Travel and Subsistence Allowance

- **Attendance at Meetings of the Full Council, the Cabinet, Committees and Sub-Committees or formally constituted panels or working parties.**
  - Attendance at the above meetings;
  - Attendance at informal meetings of any of the above meetings;
  - Formal pre-briefings for any of the above meetings;
  - Formal Portfolio Holder or Committee working parties;
  - Any other reasonable or appropriate informal briefing or meetings with officers to prepare for any of the above meetings or discuss any matter relating to the business of the Council as determined by the Chief Executive.

*Expenses are payable to all Members for attendance at Council otherwise it is payable where the Member is appointed to or invited to attend the relevant Cabinet, Committee, Sub-Committee or Working Party. It is not payable where Members choose to attend a meeting and sit in the audience.*

*Similarly expenses are payable where Members request or are invited to pre organised meetings with officers to discuss Council business.*

- **Attendance by Councillors at site or similar meetings, approved in advance**

- Refers to any site meeting or other similar meeting proposed and approved by any of the groups included in 1) above i.e. Full Council, the Cabinet, Committees and Sub-Committees or formally constituted panels or working parties.

*Expenses are payable where Members attend site meetings in relation to meetings of Cabinet, Committees, Sub-Committees or Working Parties to which they are appointed or invited to attend.*

- **Attendance at meetings of approved external bodies**

- Attendance at meetings with approved external bodies at any venue
- Appointment to an LGA members structure where expenses are not met by the LGA and the appointed member provides feedback.

*The relevant external bodies are those which the Leader has made a formal decision to appoint to. The list is on the Members' page of the intranet.*

- **Attendance at Authorised Conferences and/or Seminars**

- Attendance at conferences authorised in accordance with delegated powers.
- Attendance at any seminar if reasonable and relevant/appropriate to the responsibilities of individual Members.
- Attendance at any learning and development opportunity if reasonable and relevant/appropriate to the responsibilities of individual Members.

*Expenses are payable where the training is relevant to the Members' position on the Council. This will include Council arranged sessions such as the regular Members' Briefings. Where Members attend external training out of personal interest, that will not be payable.*

- **Attendance at Civic Events**

- Attendance by the Chairman or Vice Chairman and their consorts at civic events.

*Expenses are payable for the Chairman or Vice Chairman and their consorts undertaking civic duties. They will not be payable for other members attending civic events.*

- *Exceptional Circumstances*

*The Chief Executive may designate as approved duties such events for travel claim purposes where attendance by a Councillor(s) would be in the interests of the*

*Council and the event otherwise has not been so designated under any of the foregoing provisions.*

**5.0 APPLICATION OF THE SCHEME**

The following principles will apply in the adopted scheme.

**5.1 Substitute Members**

The scheme does not permit the remuneration for substitute Members, other than in respect of payment for travel and subsistence for substitution at meetings and attendance at any mandatory training. This is on the basis that a Member has been named as a substitute by their Group Leader.

## Part 7

## MEMBERS' ALLOWANCES SCHEME

## TENDRING DISTRICT COUNCIL

## Councillors' Schedule of Commitment

Councillor [Enter Full Name]

I wish to claim the allowances set out below which I believe is in accordance with my entitlement under the Member's Allowances Scheme.

	Annual Remuneration	
<b>BASIC ALLOWANCE</b>		
<b>SPECIAL RESPONSIBILITY ALLOWANCE</b> Special Responsibility Allowance is paid to those Councillors who have significant responsibilities:-  Leader of the Council Other Members of the Cabinet Group Leader(s) Audit Committee Chairman Community Leadership Overview & Scrutiny Committee Chairman Resources and Services Overview & Scrutiny Committee Chairman Human Resources and Council Tax Committee Chairman Licensing and Registration Committee Chairman Licensing and Registration Sub-Committees Chairman Planning Committee Chairman Planning Committee Vice Chairman Planning Committee Members Planning Policy & Local Plan Committee Chairman Standards Committee Chairman		
<b>Total Annual Allowance £</b>		
<b>Childcare Allowance</b> I wish to register my eligibility for this allowance and attach an appropriate written declaration to this effect. **please delete as appropriate	<b>YES**</b>	<b>NO**</b>
<b>DEPENDENT CARERS' ALLOWANCE</b> I wish to register my eligibility for this allowance and attach an appropriate written declaration to this effect. **please delete as appropriate	<b>YES**</b>	<b>NO**</b>

I understand that travel and subsistence and carers' claims need to be submitted by the 2<sup>nd</sup> working day of each month in order to be paid in that month. I undertake to inform the Head of Democratic Services and Elections of any circumstances that will affect my entitlement to any of the above allowances.

Signed \_\_\_\_\_ Date \_\_\_\_\_

(Lilac)

## Part 7

**MEMBERS' ALLOWANCES SCHEME**

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**DECISION OF COUNCIL – 24 JANUARY 2023**

Council on 24<sup>th</sup> January 2023 agreed the following scheme with effect from that date or otherwise on 1 April 2022 in respect of Travel Mileage, Dependents' Carers' and Subsistence Allowances. And otherwise approved the Basic and Special responsibility Allowances for 2022/23 and until 2027/28 shall be index linked to the Office of National Statistics estimated public sector regular average weekly earnings growth rate and applied to the Scheme from the following April.

**SCHEDULE OF ALLOWANCES****Period 1<sup>st</sup> April 2023 – end of the Municipal Year**

**(where a Councillor is entitled to claim three or more Special Responsibility Allowances the expectation is that they will claim only two such Allowances (see para 3.1 above))**

<b>Allowances</b>	<b>Annual Amount</b>
Chairman of the Council (see paragraph 2.8 above)	£7,447
Vice-Chairman of the Council (see paragraph 2.8 above)	£1,959
Basic Allowance	£6,532
<b>Special Responsibility Allowances</b>	
Leader of the Council	£22,209
Deputy Leader of the Council	£15,647
Portfolio Holder (Cabinet Member who is not the Leader or Deputy Leader)	£10,647
Chairman – Planning Committee	£7,500
Vice Chairman - Planning Committee	£1,900
Members of Planning Committee	£1,200

## Part 7

**MEMBERS' ALLOWANCES SCHEME**

Chairman – Planning Policy and Local Plan Committee	£3,265
Chairman – Licensing and Registration Committee	£1,500
Chairman – Miscellaneous Licensing Sub-Committee	£750
Members of Licensing and Registration Committee	£326
Chairman – Audit Committee	£4,572
Chairman – Community Leadership Overview & Scrutiny Committee	£4,572
Chairman – Resources and Services Overview & Scrutiny Committee	£4,572
Chairman – Human Resources and Council Tax Committee	£3,265
Chairman of the Tendring Colchester Borders Garden Community Joint Committee	£4,572
Member of Tendring Colchester Borders Garden Community Joint Committee	£1,500
Director of a Company (e.g. Freeport East)	£4,572

**Group Leader Payments**

Payment will be made under the Scheme to a Group Leader who is the leader of any group. The “Group” must comprise 2 or more members.

Group Leaders (who meet the “Group Leader” criteria) with two or three Members only	£200
Group Leaders (who meet the “Group Leader” criteria) with four or more members	£1,017 + £105 per group member

That in relation to any new or revised Committee arrangements, the role of Chairman (or other approved special responsibility) be allocated to the following categories by Council

Category	Relevant Allowance
A	£4,572

## Part 7

**MEMBERS' ALLOWANCES SCHEME**

B	£3,265
C	£1,500
D	£750
E	Zero

**Dependants' Carers' Allowance**

This allowance is to reimburse costs incurred for care arranged by the Councillor for a dependant (including care for the Councillor's children) to enable the Councillor to attend formal meetings of the Council or other approved official events.

This allowance is set at the prevailing rate as adopted by the Living Wage Foundation as its 'Real Living Wage' for outside of London. The 'Real Living Wage' rate is £9.50 per hour and is payable for care costs to a maximum of 15 hours per week.

In exceptional circumstances a claim for reimbursement of higher costs incurred may be permitted where the care provided is particularly specialist in nature.

**Travel Mileage Allowance**

The HMRC considers the following mileage rates as not including an element that is taxable. In view of this the Council has adopted the prevailing HMRC rates at this level as the appropriate rates to use in recompense of costs incurred by Councillors in travel to attend formal meetings and for approved official business of the Council. Where the duty is within the District reimbursement shall be limited to travel/duty time within the District (see paragraph 2.5 above).

<b>Vehicle</b>	<b>First 10,000 business miles in the tax year</b>	<b>Each business mile over 10,000 in the tax year</b>
Cars and vans	45p	25p
Motor cycles	24p	24p
Bicycles	20p	20p

Passenger payments - cars and vans - 5p per passenger per business mile for carrying another Councillor/officer in a car or van on journeys which are also official business journeys for them.

## Part 7

**MEMBERS' ALLOWANCES SCHEME**

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**Subsistence**

HMRC subsistence rates (and qualifying conditions) are those adopted by Tendring District Council for its Councillors in this Scheme. The current rates and conditions are as follows (and apply to authorised conferences/events/meetings/visits only):-

Rates are set as follows.

<b>Minimum journey time</b>	<b>Maximum amount of meal allowance</b>
5 hours	£5
10 hours	£10
15 hours (and ongoing at 8pm)	£25

As set out in paragraph 2.5 above claims in respect of duties in the District shall be reimbursed only in relation to the time in the District.

Where a scale rate of £5 or £10 is paid and the qualifying journey in respect of which it is paid lasts beyond 8pm a supplementary rate of £10 can be paid to cover the additional expenses necessarily incurred as a result of working late.

A meal is defined as a combination of food and drink and would take a normal dictionary meaning. Where Councillors are required to start early or finish late on a regular basis, the over 5 hour and 10 hour rate, whichever is applicable, can be paid provided that all the other qualifying conditions are satisfied.

Qualifying conditions - Benchmark scale rates must only be used where all the qualifying conditions are met. The qualifying conditions are:  
the travel must be in the performance of a Councillor's duties or to a temporary place of work, on a journey that is not substantially ordinary commuting.  
the Councillor should be absent from his normal place of work or home for a continuous period in excess of five hours or ten hours.  
the Councillor should have incurred a cost on a meal (food and drink) after starting the journey and retained appropriate evidence of their expenditure.

A Councillor can only be reimbursed for a meal once. If the cost of an evening meal or breakfast is reimbursed on an actual basis, because it is included in the cost of an overnight stay, the Councillor would not also be entitled to a benchmark rate in respect of those meals.

Reimbursement of **ALL** subsistence expenses (including hostel costs) will be based on **actual cost incurred on production of receipts** – maximum amounts will only be paid based on proof of expenditure of that level.

All claims for subsistence must therefore be accompanied by receipts demonstrating expenditure actually incurred. This is to ensure that no National Insurance liability is incurred on payments of such allowances.

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(Lilac)



**Chief Executive**  
Ian Davidson  
01255 686007



Green Boxes - Management Team Members

\*\* 12 Month Secondment/Arrangement