

## **Part 4D - Executive Procedure Rules**

### **1.0 How does the Executive operate?**

#### **1.1 Executive functions**

The Executive is the council's executive body and is responsible for carrying out those functions which by law or under this Constitution are designated as 'executive functions'.

#### **1.2 The Leader decides how the executive functions shall be discharged. This may be by:**

- (a) the Executive as a whole;
- (b) a committee of the Executive;
- (c) an individual Member of the Executive;
- (d) an officer;
- (e) an area committee;
- (f) joint arrangements; or
- (g) another local authority.

#### **1.3 Delegation by the Leader**

At the annual meeting of the Council, the Leader will present to the Council a written record of delegations made by him or her for inclusion in the Council's scheme of delegation at Part 3 to this Constitution. The document presented by the Leader will contain the following information about executive functions in relation to the coming year:

- (a) the size of the Executive;
- (b) the names, addresses and wards of the people appointed to the Executive by the Leader;

- (c) the name, address and ward of the person appointed to be the Deputy Leader;
- (d) the extent of any authority delegated to Executive Members individually, including details of the limitation on their authority;
- (e) the terms of reference and constitution of such committees of the Executive as the Leader appoints and the names of Executive Members appointed to them;
- (f) the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements and the names of those Executive Members appointed to any joint committee for the coming year; and
- (g) the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.

#### 1.4 Further delegation of executive functions

1.4.1 Where the Executive, a committee of the Executive or an individual member of the Executive is responsible for an executive function, they may further delegate the exercising of that executive function to an officer or via joint arrangements unless where disallowed by law.

1.4.2 Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

#### 1.5 The council's scheme of delegation and executive functions

1.5.1 The council's scheme of delegation will be subject to adoption by the Council and the Executive. It will contain the details required in Chapter 7 and set out in Part 3 of this Constitution.

1.5.2 The Leader may amend the scheme of delegation relating to Executive functions at any time during the year by giving written notice to the Monitoring Officer and to the person, body or committee concerned. The notice must set out the extent of the

amendment to the scheme of delegation and whether it entails the withdrawal of delegation from any person, body, committee or the Executive as a whole. The appropriate amendments to the constitution will be made by the Monitoring Officer. This will have immediate effect and the change(s) will be referred to Council annually within the Constitution.

1.5.3 When the Executive seeks to withdraw delegation from a committee, notice will be deemed to be served on that committee when the Leader has served it on the chairman of the committee.

## 1.6 Conflicts of Interest

1.6.1 Where any or all members of the Executive has or have a conflict of interest this should be dealt with as set out in the council's Code of Conduct for Members in Part 5 of this Constitution.

1.6.2 If the exercise of an executive function has been delegated to a committee of the Executive, an individual Member or an officer, and a conflict of interest arises, then the function will be exercised in the first instance by the person or body who made the delegation or otherwise if so specified in the council's Code of Conduct for Members in Part 5 of this Constitution.

## 1.7 Executive meetings – when and where?

1.7.1 The Executive will meet at least five times a year at times to be agreed by the Leader. The Leader has the ability to cancel meetings of the Executive.

1.7.2 The Executive shall meet at the council's offices at Wallfields, Pegs Lane, Hertford, Hertfordshire or another location to be agreed by the Leader.

1.7.3 Notice of the dates and times of meetings, and their agendas, will be published in accordance with the Access to Information Procedure Rules.

## 1.8 Quorum

The quorum for a meeting of the Executive shall be a majority of the members of the Executive. The quorum of any committee of

the Executive shall be a majority of the Members appointed to that committee.

## 1.9 How are decisions to be taken by the Executive?

1.9.1 Executive decisions which have been delegated to the Executive as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.

1.9.2 Where an executive decision is delegated to a committee of the Executive, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Executive as a whole.

## 2.0 How are executive meetings conducted?

### 2.1 Who presides?

The Leader will preside at any meeting of the Executive or its committees at which he/she is present, or may appoint another person to do so. If the Leader is not present and has not appointed another person to preside at the meeting, the members of the Executive who are present shall choose a member to preside.

### 2.2 Who may attend?

2.2.1 All members of the Council may attend meetings of the Executive.

2.2.2 Without prejudice to the powers of the person presiding at the meeting to control debate as chairman, the following rights of address apply:

- (a) members of the Executive are entitled to speak at any meeting on any agenda item;
- (b) any Group Leader who is not a member of the Executive (or a member nominated by him or her) may speak on any item before the Executive;
- (c) any Member Champion may speak on any particular agenda item so long as they have informed the Leader of the Council prior to commencement of the meeting of his

or her wish to do so. So long as this requirement is met, the person presiding at the Executive meeting shall call on the Member Champion to speak on the agenda item immediately following its presentation by the appropriate Executive Member(s) or officer(s). The Member Champion shall make clear to those present at the meeting his or her particular Member Champion remit and that he or she is speaking in this capacity;

- (d) any member of the Council who is not an Executive Member may speak in accordance with Rule 2.5 (d) or with the consent of the person presiding; and
- (e) the person presiding may, at his or her discretion, permit one or more members of the public to address the Executive on a matter on the agenda provided he or she is satisfied that to do so would assist the Executive in coming to a decision on that matter. In giving such permission, the person presiding may attach such conditions as he or she thinks fit.

2.2.3 The person presiding has discretion to determine or limit the amount of time, and the number of times, that any member may speak on a particular item.

## 2.3 Conduct of the Executive meeting

2.3.1 At each meeting of the Executive or a Committee of the Executive the following business will be conducted:

- (a) Leader's announcements, if any, whether made in person or by a person nominated to do so in the Leader's absence or the person presiding in the absence of such a nomination;
- (b) apologies for absence;
- (c) confirm as a correct record and sign the minutes of the last meeting;
- (d) declarations of interest, if any;

- (e) matters referred to the Executive (whether by the Overview and Scrutiny Committee, Audit and Governance Committee or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- (f) consideration of reports from the Overview and Scrutiny Committee and/or Audit and Governance Committee; and
- (g) matters set out on the agenda for the meeting, which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution.

2.3.2 The person presiding at the meeting may vary the order of the agenda where it is necessary to do so for the proper conduct of the business of the meeting. Where the person presiding is of the opinion that there is insufficient information available to the Executive to enable a proper decision to be reached, consideration of the matter in question may be deferred to a future meeting.

## 2.4 Consultation

All reports to the Executive on proposals relating to the budget and Policy Framework must contain details of the nature and extent of consultation with stakeholders and the relevant Scrutiny Committee, where applicable, 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.

## 2.5 How items can be put on the agenda for an Executive meeting

Items may be placed on the agenda of an Executive meeting in any of the following ways:

- (a) an item will be placed on the agenda of the next available meeting of the Executive where the Overview and Scrutiny Committee, the Audit and Governance Committee or the

Council has resolved that an item be considered by the Executive. There will be a standing item on the agenda of each meeting of the Executive for matters referred by the Overview and Scrutiny and Audit and Governance Committees;

- (b) if any two of the Head of Paid Service, Chief Financial Officer and Monitoring Officer are of the opinion that a matter needs to be considered by the Executive or, alternatively, the Monitoring Officer or the Chief Financial Officer acting individually may request an item be included for consideration on the agenda of an Executive meeting. If there is no meeting of the Executive soon enough to deal with the issue in question, then the officers requesting inclusion of the item may request that the Chief Executive calls a meeting in pursuance of his or her statutory duties at which the matters can be considered ;
- (c) the Leader or any other member of the Executive may require the Proper Officer to place on the agenda of the next available meeting an item for consideration;
- (d) the Leader may agree to a request of any member of the Council that an item be placed on the agenda of the next available meeting for consideration. The notice of the meeting will give the name of the member who asked for the item to be considered. This member will be invited to attend the meeting and will be allowed to speak on the item. There shall be a maximum of two such items on any one Executive meeting agenda.

### **3.0 Decision-making**

#### 3.1 Key decisions

3.1.1 An executive decision is a key decision if it meets the criteria listed in Part 2, Chapter 11.3.6 of this Constitution.

3.1.2 Key decisions may be taken by:

- (a) the Executive;

- (b) an Executive Member to whom, or a committee of the Executive to which, authority over the function to which the key decision relates has been delegated;
- (c) an Executive Member or officer to whom, or a committee of the Executive to which, authority to make the specific key decision has been delegated; or
- (d) the delegator of the authority should the decision be returned to the delegator.

## 3.2 Forward Plan

3.2.1 Leader will ensure that the Proper Officer publishes a document, to be known as 'the Forward Plan', which shall include:

- (a) all key decisions that are likely to be made on behalf of the council during the four month period following publication of the Forward Plan, with the proposed date of a decision on any matter appearing on the Forward Plan for the first time being no less than 28 clear days after publication;
- (b) a list of the documents to be submitted to the decision maker(s) for each key decision listed;
- (c) details of how copies of the listed documents may be reasonably accessed along with the procedure for requesting copies; and
- (d) other relevant documents which may be submitted to the decision-maker(s) along with details of to whom such documents should be submitted.

3.2.2 The Proper Officer will ensure that the current Forward Plan may be inspected at all reasonable hours and free of charge at the council's main offices.

## 3.3 Making key decisions

3.3.1 Key decisions may be taken only if due notice has been given of them in the Forward Plan unless the procedure for taking decisions without due notice has been followed.

- 3.3.2 Key decisions may be taken by the Executive, by individual Executive Members, by committees of the Executive or by officers acting in accordance with powers delegated generally or specifically for that purpose.
- 3.3.3 No key decision shall be acted upon until either the deadline for submission of a requisition (often termed 'call in') has passed without one being submitted or any requisition submitted has been disposed of, unless the urgency provisions section 3.8 below.
- 3.3.4 Where an Executive Member or an officer receives a report which they intend to take into account when making a key decision, they must not make that decision until the report has been available for public inspection for at least five clear days. This mirrors the notice period applicable to reports relating to key decisions to be considered by the Executive when meeting together.
- 3.3.5 The Executive Member or officer must ensure that the Proper Officer makes the report referred to in 3.3.4 above (and a list and copies of Background Papers) available for inspection by members and the public as soon as reasonably practicable after the Executive Member or officer receives it.
- 3.3.6 Before making a decision, the decision-maker shall give full consideration to all reports made available relating to the decision, any comments on the proposed decision made by Members and, where necessary, consideration shall be given to the need for further consultation or information.

### 3.4 Non-key decisions

Non-key decisions are defined in Part 2, Chapter 11.3.8 of this Constitution.

### 3.5 Making non-key decisions

- 3.5.1 Non-key decisions may be taken by the Executive, by an individual Executive Member, a committee of the Executive or by an officer. In all cases, the decision-making body or person will be determined in accordance with powers delegated generally or specifically for that purpose.

- 3.5.2 No non-key decision shall be acted upon until either the deadline for submission of a requisition (often termed 'call in') has passed without one being submitted or any requisition submitted has been disposed of, unless the urgency provisions under paragraphs 3.8.2 (b), 3.8.2 (c) and 3.8.3 below.
- 3.5.3 Where an Executive Member or an officer receives a report which they intend to take into account when making a non-key decision, they must not make that decision until the report has been available for inspection by members and the public for at least five clear days. This mirrors the notice period applicable to reports relating to key decisions.
- 3.5.4 The Executive Member or officer must ensure that the Proper Officer makes the report referred to in 3.5.3 above (and a list and copies of Background Papers) available for inspection by members and the public as soon as reasonably practicable after the Executive Member or officer receives it.
- 3.5.5 Before making a decision, the decision-maker shall give full consideration to all reports made available relating to the decision, any comments on the proposed decision made by Members and, where necessary, consideration shall be given to the need for further consultation or information.
- 3.6 Executive Member Decisions: Supplemental Rules
- 3.6.1 Individual Executive Members are empowered in line with their portfolios and delegations listed in Part 3 E of this Constitution to make Executive decisions. If an individual Executive Member intends to make a key and non-key decision, the following additional rules apply:
- (a) If the Leader or an Executive Member has a Pecuniary Interest in any matter which he or she is requested to consider, he or she shall immediately return the papers to the Chief Executive. The matter will then be considered by the Executive. It is incumbent on council officers to brief themselves as fully as possible to avoid this situation arising.
  - (b) If an Executive Member is absent or unavailable for any reason, the Leader of the Council (or in his/her absence

the Deputy Leader) may, by written notice to the Chief Executive, have power to temporarily re-allocate that portfolio to another Executive Member until the next Executive meeting (when the Executive can decide on the matter). The Leader or Executive Member will be able to take part in the decision-making process if a dispensation has been granted.

- (c) If an Executive Member is unable to act for any other reason, the Leader of the Council is authorised to make the decision or in his/her absence or at his/her request the Deputy Leader is authorised to make the decision. If the Leader is unable to act, the Deputy Leader is authorised to make the decision.
- (d) In respect of any ordinary business, the Leader or an Executive Member may exceptionally decline to decide the matter and instead ask the Proper Officer to put it on the agenda for the next Executive meeting.
- (e) In respect of any urgent business, if the Portfolio Holder delays or declines to make a decision the Chief Executive shall have power to seek a decision from the Leader or Deputy Leader.

3.6.2 Individual Executive Members shall not be empowered to make a key or non-key decision if:

- (a) the decision would be a departure from the agreed annual budget or Policy Framework;
- (b) the Leader has indicated that the decision should be taken collectively by the Executive. Notification of this by the Leader must be made to the Head of Legal and Democratic Services;
- (c) the decision is solely in relation to the Executive Member's own ward including, for example, making a grant, unless this is agreed by the Leader;
- (d) the Executive Member has either a disclosable pecuniary interest or some other conflict of interest in which case the provisions in 3.6.1(a) above apply;

- (e) the authority to make the decision has been delegated to an officer, unless the officer refers the decision to the Executive Member; or
- (f) the Monitoring Officer or Chief Executive has determined that the decision is not an executive decision.

3.6.3 As with any executive decision, the Executive Member must consult those officers deemed appropriate by the Chief Executive and must take into account of this advice and the legal, financial and equalities implications of the decision under consideration.

3.6.4 Where there are significant implications across portfolios, the decision should be made in consultation with other appropriate Executive Members.

3.6.5 Where a decision has a significant impact on an individual ward the Executive Member should consult the appropriate ward member(s).

3.6.6 Where it is not clear in which Executive Member's portfolio an issue sits, the Leader shall decide. If the appropriate Executive Member is unavailable and a decision needs to be taken urgently, then the Leader may take the decision in consultation with the Chief Executive.

3.6.7 The rules relating to the notification and recording of decisions, along with call in procedures, as covered elsewhere in Part 4 D of the Constitution apply to executive decisions taken by individual Executive Members.

### 3.7 Recording of Key and Non-Key Executive decisions

3.7.1 The outcome of executive decisions, whether key decisions or non-key decisions, shall be recorded as soon as practicable after they have been made in accordance with Access to Information Procedure Rules.

3.7.2 An executive decision taken by the Executive at an Executive meeting shall be recorded in the minutes of that meeting. An executive decision taken by an individual Executive Member or an officer shall be recorded separately. In both cases, the Proper

Officer shall produce a written statement in respect of that decision which includes:

- (a) a record of that decision;
- (b) a record of the reasons for that decision;
- (c) details of any alternative options considered and rejected at the time;
- (d) a record of any conflict of interest or of any dispensation granted.

3.7.3 Following the making of an executive decision by whichever means whether in private or public as allowed by this constitution, the Proper Officer shall ensure that any records prepared in connection with and any report considered shall be available for inspection by members of the public.

3.8 Action where a key decision has not been shown on the Forward Plan

3.8.1 A key decision that has not been shown on the Forward Plan shall only be made in exceptional circumstances.

3.8.2 Such a key decision shall only be made if the Chairman of the Overview and Scrutiny Committee signifies in writing on the report relating to the decision to be made that:

- (a) it was reasonable in the circumstances for notice of the need for the decision not to appear on the Forward Plan;
- (b) there is urgency for the decision to be made that justifies its being dealt with immediately rather than being processed in the normal way;
- (c) there are no grounds for supposing that the decision would be called in if processed in the normal way.

3.8.3 Where the Chairman so signifies, the decision may be made forthwith and implemented without delay under the provisions for this in Part 4E, section 1.16 of this Constitution. Under these provisions, the decision shall not be liable to be called in under the procedure governing this in Part 4E, section 1.15 of this Constitution.

# EXECUTIVE DECISION-MAKING PROCESS

