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## CHAPTER 3 – THE LEADER AND THE EXECUTIVE

### 11. The Executive

#### 11.1 Role

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

#### 11.2 Form and composition

~~(a) — The Executive will consist of the Executive Leader plus at least two but not more than 9 other Councillors.~~

~~11.(b) The Leader will oversee the development of the Council's policy priorities and may also exercise Executive functions.~~

~~(c) — Within the discretion allowed by statute the form and composition of the Executive may change.~~

### 3 Leader

The Leader will be a Councillor elected to the position of Leader ~~by normally at the Annual Meeting of the full Council following on from the ordinary election of all Councillors signified by a show of hands.~~ The Leader will hold office until ~~the day of the next Annual meeting following the ordinary election of all Councillors unless:~~

(a) he/she resigns from the office; or

(b) he/she ceases to be a Councillor ~~except where the Leader fails to be returned as a Councillor following an ordinary election of all Councillors when unless the Leader resigns, is disqualified or is otherwise removed from office he/she shall continue as Leader until the day of the Annual Meeting;~~ or

~~(c) — he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or~~

~~(cd) he/she is removed from office by resolution of the Council for misconduct or other good reason established following investigation by the Standards Committee; or~~

~~(e) — he/she is removed by resolution at a special Meeting of the Council called for that purpose; or~~

~~(f) — by resolution of the Council where he/she fails for six months to attend any meeting of the Executive, or any Committee of the Executive or, acting alone, fails to discharge any functions which are the responsibility of the Leader then unless the failure was due to some reason approved by the Local Authority, he/she shall cease to be a member of the Local Authority.~~

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The Leader of the Council will be elected at the Annual Council Meeting in the year of the Borough-wide elections.

~~Where the Annual Meeting or any other meeting of the Council fails to elect a Leader a Special Meeting of the Council shall be held within a maximum of ten working days for the purpose of electing a Leader. Where a Leader resigns then a Special Meeting of the Council shall be held within ten working days of the resignation for the purpose of electing a Leader. Where a meeting of the Council removes a Leader from office then a new Leader is to be elected at that meeting.~~

In the period between the ordinary election of Councillors and the appointment of a Leader, if ~~for any reason~~ there is not a Leader in place then any executive decisions normally reserved to Members which need to be taken as a matter of urgency ~~to protect the interest of the Council or which cannot be delayed until the appointment of the Leader~~ shall be taken by the Chief Executive in consultation with the Leader of the Group with the majority of seats following the election. In the event of there being no group with an overall majority of seats the Chief Executive shall consult with all Group Leaders.

#### 11.4 Other Executive Members

Each Executive Member shall be appointed by the Leader and shall hold office for a period determined by the Leader which must terminate no later than the fourth day after the ordinary election of all Councillors unless:

- (a) he/she resigns from office; or
- (b) he/she ceases to be a Councillor; or
- ~~(c) he/she is disqualified or suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension at the discretion of the Leader); or~~
- ~~(cd) he/she is removed from office by the Leader of the Council. The Leader shall serve the Councillor, the Chief Executive and all Members with written notice (including e-mail) of the removal which shall take effect upon service of the Chief Executive.~~
- ~~1 (e) the Council removes them from office by resolution following a recommendation to that effect from the Standards Committee;~~
- ~~(f) he/she fails for six months to attend any meeting of the Executive, or any Committee of the Executive or, acting alone, fails to discharge any functions which are the responsibility of the Executive then unless the failure was due to some reason approved by the Local Authority, he/she shall cease to be a member of the Local Authority.~~

#### 1.5 Proceedings of the Executive

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in **this Chapter** of the Constitution.

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## 1.6 ~~Responsibility for Functions~~

The exercise of functions which are the responsibility of the Executive will be determined by the Leader. The Proper Officer will, on behalf of the Leader, will maintain a list in ~~Part 3 of this the~~ Constitution setting out which individual Members of the Executive, Committees of the Executive, officers or joint arrangements are responsible for the exercise of particular executive functions. ~~The list shall include the general areas of responsibility of the individual member of the Executive. The Leader shall also maintain a list of Executive functions delegated to officers. The Leader shall advise all Members and the Chief Executive and monitoring officer in writing (to include e-mail) where the identity of an Executive member or portfolio holder or the scope of a portfolio changes or where a new portfolio is created or a portfolio is terminated.~~

## 11.7 Deputy Leader

The Leader will appoint one of the Executive members as his/her Deputy to act when the Leader is absent or otherwise unable to act. This shall include any period following the resignation or removal of the Leader and the appointment of a new Leader. Provided always that the Deputy Leader:

(a) is not permitted to make changes to Executive Functions or delegations or appoint or dismiss any member of the Executive;

(i) except following the resignation or removal of the Leader to protect the interests of the Council and which action cannot be delayed until the appointment of a new Leader and following consultation with the Chairperson of the main Policy Development and Scrutiny Committee and the Chairperson of the General Purposes and Licensing Committee and the Chief Executive, or

(ii) where in the opinion of the Chief Executive the Leader of the Council is incapacitated for such a period of time that the efficient operation of the Council would be impaired and only then following consultation by the Deputy Leader. ~~with members at a meeting of the full Council.~~

(b) shall not act in the Leader's stead for a consecutive period of more than three or a combined period of six months in any municipal year without having obtained the endorsement of the full Council. If the Council is not prepared to endorse the Deputy Leader then a special meeting shall be held within 10 working days to consider the removal of the Leader and the appointment of a new Leader. Subject to the restrictions in paragraph 1.4 of this Chapter, the Deputy Leader can continue to act until the appointment of a new Leader.

## 11.8 –Portfolios

The Executive comprises of the following Members –

- Leader of the Council
- Portfolio Holder for Children and Young People
- Portfolio Holder for Adult Care and Health
- Portfolio Holder for Public Protection and Enforcement
- Portfolio Holder for Renewal, Recreation and Housing
- Portfolio Holder for Resources, Commissioning and Contract Management
- Portfolio Holder for Environment
- Portfolio Holder for Transport, Highways and Road Safety

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## 11.9 Key decisions.

(a) A key decision is an executive decision made by the Executive, a Portfolio Holder or an officer which meets either of the following criteria set out in regulations:

(i) It results in significant expenditure (or savings) above thresholds for each portfolio, currently:

- Adult Care & Health/Children, Education & Families/Environment/Transport, Highways and Road Safety - £500,000
- Resources, Commissioning & Contract Management - £250,000
- Renewal, Recreation & Housing /Public Protection & Enforcement - £50,000

(ii) It has a significant impact on the community in two or more wards.

(b) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in **Chapter 3** of this Constitution.

## **12. Executive Assistants**

- The Council's Constitution allows the Leader to appoint Executive Assistants to support Portfolio Holders. Their overall role will be to provide support and advice to their Portfolio Holder.
- The budget currently allows for up to six Executive Assistants to receive a special responsibility allowance.
- Each Portfolio Holder should ensure that any councillor appointed as their Executive Assistant is in a position to undertake the role and accept the receipt of the SRA and that Executive Assistant is clear as to what will be their role and responsibilities during the year.
- Executive Assistants cannot exercise executive powers, and therefore cannot take executive decisions in the place of their respective executive Members. However, they can represent their Portfolio Holder, and deputise for him or her, in most other circumstances. This might include attending, and speaking at, Executive and Policy Development and Scrutiny meetings, and answering questions in the Portfolio Holder's absence.
- Executive Assistants will usually accompany the Portfolio Holder to relevant meetings, such as Policy Development and Scrutiny Committees, partnership board meetings, site visits and meetings with senior officers or partners.

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- Executive Assistants may be asked by their portfolio holders to take a lead on specific issues, or carry out particular tasks, within the portfolio.
  - Executive Assistants may not serve as Chairpersons or Vice-Chairpersons of Policy Development and Scrutiny Committees, or as members of Executive, Resources and Contracts PDS Committee.
  - PDS Committees should consider inviting the Executive Assistants at the first meeting of each Municipal Year to set out what they hope to do and to be questioned by the Committee.
  - ~~Executive Assistants will provide a report once a year to the General Purposes and Licensing Committee on the work they have undertaken in justification of the receipt of their allowance.~~

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## 13. Executive Procedure Rules

### 1. How does the Executive operate?

#### 1.1 Who may make Executive decisions?

The arrangements for the discharge of Executive functions ~~will be~~ are set out in **this Chapter** ~~Executive arrangements~~. If they are not set out, then the Leader may decide how they are to be exercised. In either case, the arrangements of the Leader ~~and~~ may provide for Executive functions to be discharged by:

- i) the Executive as a whole; ~~and/or~~
- ii) a Committee of the Executive; ~~and/or~~
- iii) him/herself or an individual Member of the Executive, including the Leader; ~~and/or~~
- iv) an officer; ~~and/or~~
- v) joint arrangements; ~~and/or~~
- vi) another local authority.

#### 1.2 Delegation by the Leader

At the annual meeting of the Council, immediately following the full Borough Council elections (or otherwise if necessary), the Leader will provide ~~present~~ to the Council a written record of delegations made by him/her for inclusion in the Council's scheme of delegation at **Chapter 6 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:

- i) the names and addresses ~~for correspondence and wards of the Councillors of the people~~ appointed to the Executive by the Leader ~~if applicable~~;
- ii) the extent of any authority delegated to Executive Members individually, including details of the limitation on their authority;
- iii) the Terms of Reference and Constitution of such Executive Committees as may be appointed from time to time and the names of Executive Members appointed to them;
- iv) 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
- v) 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.

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### 1.3 Sub-delegation of Executive functions

- (a) Unless the Council directs otherwise, the Executive may delegate further to a committee of the Executive or to an officer.
  - (b) Unless the Leader directs otherwise, a committee of the Executive to whom functions have been delegated by the Leader may delegate further to an officer.
  - (c) Unless the Leader directs otherwise, an Executive- member to whom functions have been delegated by the Leader may delegate further to an officer. ~~Where the Executive, a Committee of the Executive or an individual Member of the Executive is responsible for an Executive function, they may delegate further to an Area Committee, joint arrangements or an officer.~~
- ~~(d)~~ Where Executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

### 1.4 Amending Executive Delegations

- (a) The Leader may amend the scheme of delegation relating to Executive functions at any time during the year. To do so, the Leader must give written notice to the proper 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 proper officer will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- (b) Where the Leader seeks to withdraw a delegation from a Committee, notice will be deemed to be served on that Committee when he/she has served it on its Chairperson.

### 1.5 Conflicts of Interest

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Chapter 7 ~~the appendix to this Constitution.~~
- (b) If every Member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in ~~the appendix to this Constitution~~ Chapter 7.
- (c) If the exercise of an Executive function has been delegated to a Committee of the Executive, an individual Member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Chapter 7 ~~in the appendix to this Constitution.~~

### 1.6 Executive meetings – when and where?

- (a) The Executive will have scheduled meetings. The time and place of meetings are set out in the Council's calendar of meetings ~~conventions~~. Additional unscheduled meetings may be called if necessary.

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- (b) The Executive will meet in public. Any member of the public may attend Executive meetings except for the discussion of confidential or exempt items. ~~The rights of Councillors to attend meetings of the Executive are set out in the conventions.~~

## 1.7 Quorum

The quorum for a meeting of the Executive, or a Committee of it, shall be 3 ~~of which 2 are from the majority (Administration Party) and does not have to include the Leader.~~

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

- (a) 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 Chapter 8Part 4 of the Constitution.
- (b) Where Executive decisions are 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.
- (c) Where Executive decisions are taken by the Leader or are delegated to a Portfolio Holder, they shall follow the agreed procedures of the Council, including seeking pre-decision scrutiny. ~~The current procedures are summarised in Appendices 1, 2 and 3 to the Executive Procedure Rules.~~
- (d) For the classes of decision set out in appendix 3, where there is agreement between a portfolio holder and the relevant PDS Committee, proposed decisions will be published five clear working days before the decision is to be taken, but it will not be necessary for pre-decision scrutiny to be carried out at a meeting. Any member may request that a matter be referred to the relevant PDS Committee meeting before a decision is taken.
- (e) ~~Where a scrutiny committee is operating as a select committee, the An~~ Executive Portfolio Holder may publish a “minded to” report at least ~~report~~ five clear days before making a decision which will be circulated to all Members of the Council. The following may make a referral for scrutiny within this five day period:
- The chairperson of the relevant select committee
  - A group leader and one other Member;
  - Where a decision affects a particular ward, all ward Members (or the ward Member plus one other Member in the case of Darwin ward);
  - Any five Members.

Where a referral for scrutiny is made, the issue must be considered by the relevant select committee within ten working days of the decision being referred.

In cases of urgency, where agreed by the Leader and the select committee chairperson, the five day period for referral for scrutiny may be waived.



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## 2. How are the Executive Meetings Conducted?

### 2.1 Who presides?

~~The If the Leader, or in is present he/she will preside. In~~ his/her absence, then the Deputy Leader will preside. ~~If the Leader and the Deputy are absent then In his/her absence an Executive member\_ person appointed to do so~~ by those voting members present shall preside.

### 2.2 What business?

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

- i) consideration of the minutes of the last meeting;
- ii) declarations of interest, if any;
- iii) matters referred to the Executive (whether by a Policy Development and Scrutiny Committee or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Procedure Rules or the Budget and Policy Framework Procedure Rules set out in ~~Part 4 of~~ this Constitution;
- iv) 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 4 of this Constitution.~~

Where a debate at full Council has been requested under rule 2 (xii) of the Council Procedure Rules on an executive matter, the Executive may not make a decision until that debate has taken place unless the Council would be in breach of a legal obligation by delaying the decision.

### 2.3 Consultation

All reports to the Executive from any Member of the Executive 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 Policy Development 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.

### 2.4 Who can put items on the Executive agenda?

- (a) Any Member of the Executive ~~can request may require that~~ the proper officer ~~to make sure that place~~ an item ~~is placed~~ on the agenda ~~for of the next available meeting of~~ the Executive ~~to consider for consideration~~. If ~~the proper officer~~ he/she receives such a request the proper officer will comply.
- (b) The proper officer will ~~make sure that an item is place~~ an item ~~d~~ on the agenda of the next available meeting of the Executive where a relevant Policy Development and Scrutiny Committee or the full Council have resolved that an item be considered by the Executive.
- (c) Any Councillor may ask the proper officer to put an item on the agenda of an Executive meeting for consideration, and if the Leader agrees the item will be

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considered at the next available meeting of the Executive. The notice of the meeting will give the name of the Councillor who asked for the item to be considered. ~~[This Councillor will be invited to attend the meeting, whether or not it is a public meeting and given the opportunity to speak.]~~

- (d) The Head of Paid Service, Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of an Executive meeting and may require the proper officer to call such a meeting in pursuance of their statutory duties. Any other Chief Officer may similarly include an item for consideration and require the proper officer to call a meeting.

## 2.5 Right to attend and speak

Over and above the rights of the public, the following have the right to attend meetings of the Executive and Executive Committees (whether public or private):

- all Members of the Executive
- Chairperson of Policy Development & Scrutiny Committees
- Group Leaders ~~Nominees of the two major opposition parties~~
- the Chief Executive, the Director of Corporate Services and Governance and the Director of Finance
- all other Chief Officers for items within their sphere of responsibility
- all Councillors but with the right to speak only on items in respect of which they have a ward or special interest and subject to the overriding discretion of the Chairperson
- in addition, the Executive and Executive Committees have discretion to permit other persons to attend meetings for public and private items (including Councillors who have been appointed to support the Executive in their work) and to speak

## 2.6 Meetings of Portfolio Members

The meetings of Portfolio members of the Executive will be held in public, except for those items dealt with in private under the statutory provisions relating to access to information. The following have the right to attend and speak when individual Members of the Executive are making decisions

- the Chairperson of the relevant Policy, Development & Scrutiny Committee
- the Chief Executive, the Director of Corporate Services and Governance and the Director of Finance
- all other Chief Officers for items within their sphere of responsibility
- Councillors, but with the right to speak only on items in respect of which they have a Ward or special interest and subject to the overriding discretion of the Portfolio member
- any other person at the discretion of the individual Portfolio Member of the Executive

## 2.7 Individual Portfolio Holder decisions

Upon consideration of a report from the relevant Chief Officer(s) issued in accordance with the relevant regulations, individual members of the Executive may take decisions in respect of the Executive functions set out in their terms of reference, subject to:

- (i) the budget and policy framework approved by the full Council;
- (ii) the exclusion of any matter which falls within the terms of reference of the Executive;

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(iii) the exclusion of matters falling within the delegated power of officers unless referred to the individual Executive member by the relevant Chief Officer or "called in" by the Executive member (see below); and

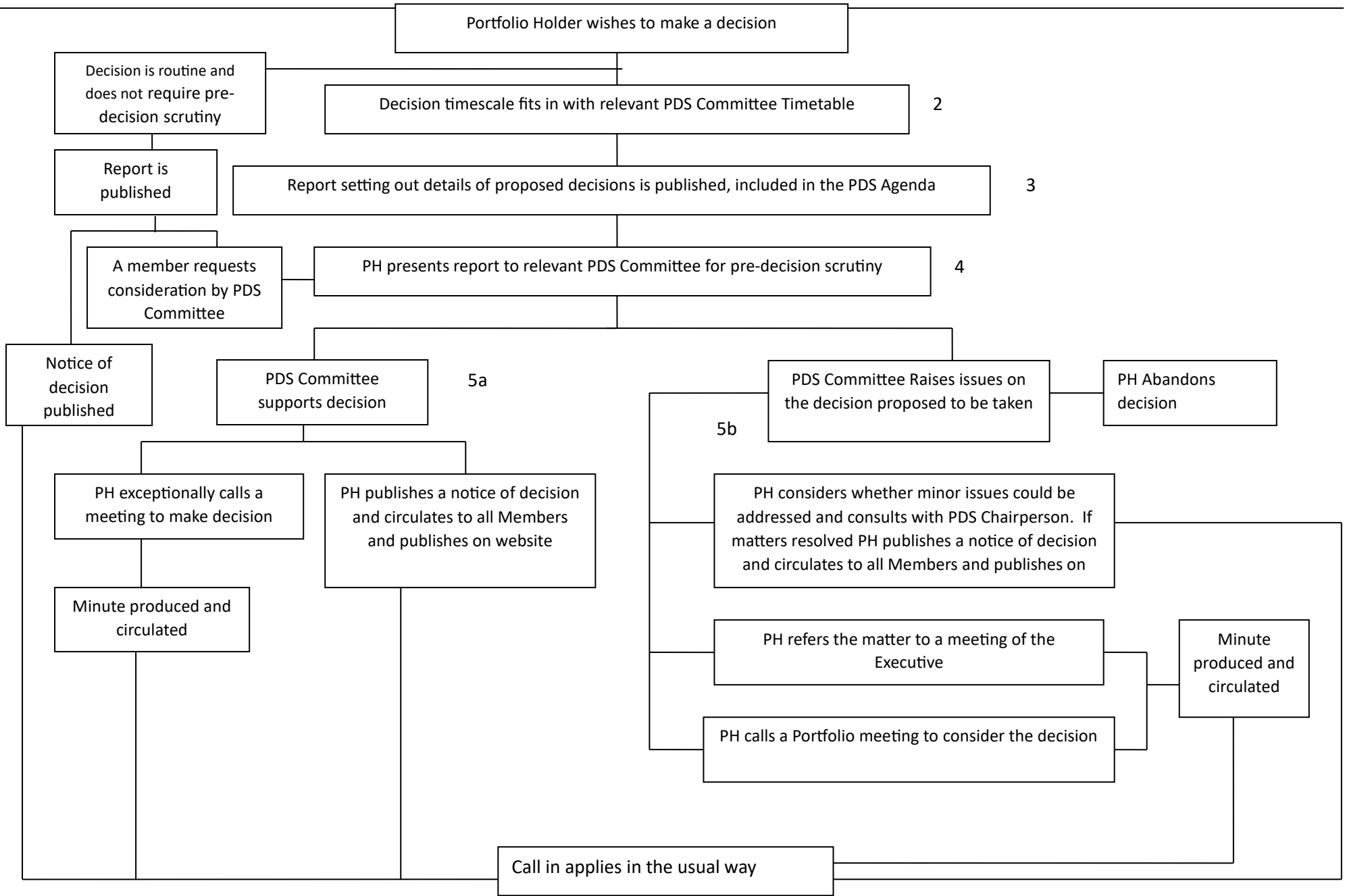
if the relevant Chief Officer is unwilling to refer a matter (or class of matters) falling within his/her delegated powers to the Executive Member for decision, then the Executive member may call the matter (or class of matters) in for his/her own decision by giving written notice to the relevant Chief Officer. A copy of the written notice shall at the same time be given to the Council's Monitoring Officer.

Where a matter or class of matters has been "called in", in accordance with this provision, the power/s in question shall, until the notice is withdrawn, be exercisable by the Executive member and not the Chief Officer unless the notice is countermanded by the Leader, or the Monitoring Officer advises that the power or powers in question are not appropriate to be discharged by the Executive member for legal or technical reasons.

## **2.8 Member support for the Executive**

The Executive may appoint other Members of the Council to support them in their work in accordance with arrangements agreed from time to time, covering numbers and roles of such support Members.

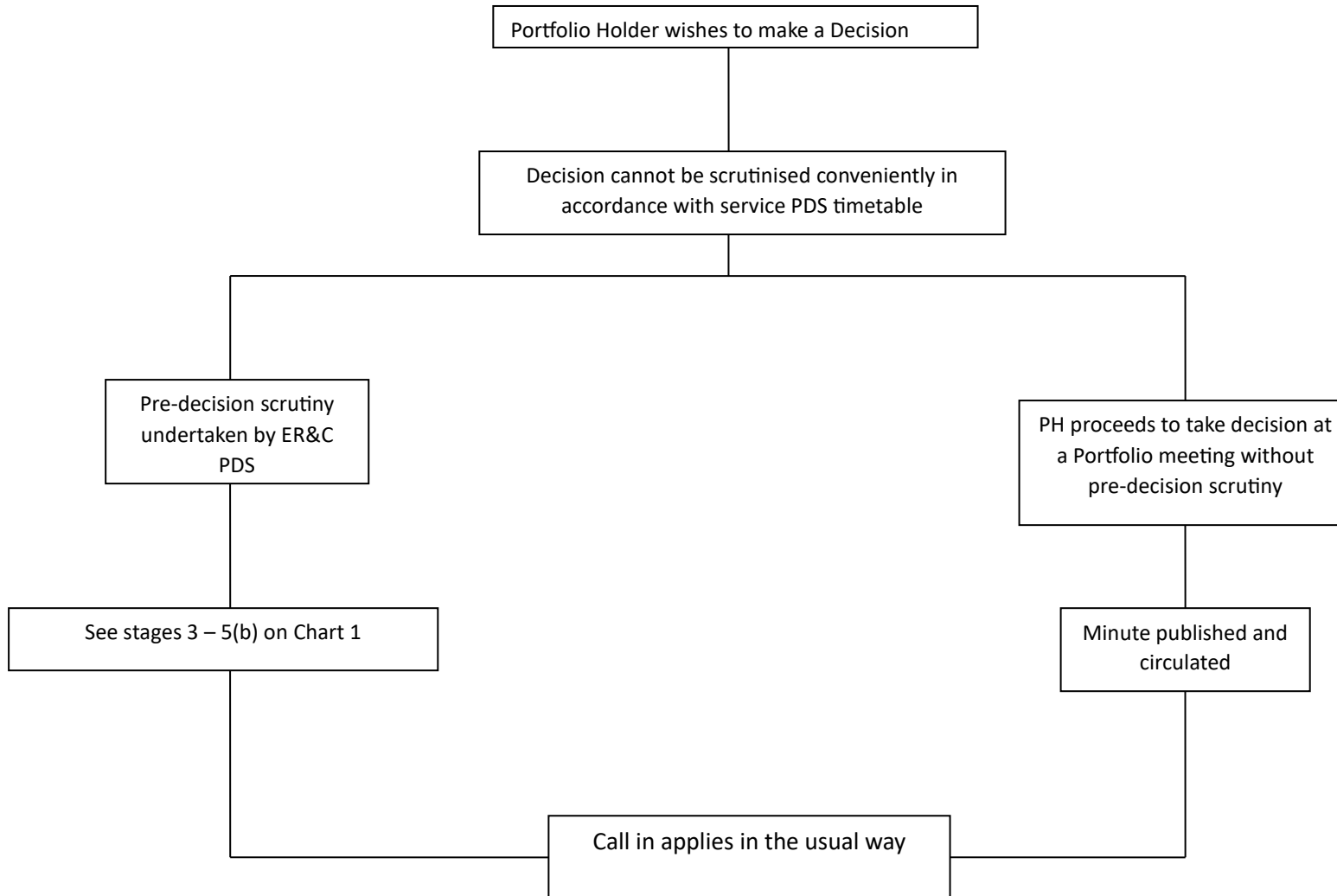
# Appendix 1 – Decision Making Procedures



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## Appendix 2 - Decision Making Charts

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## Appendix 3

Where PDS Committees and Portfolio Holders are in agreement, Portfolio Holders may make decisions without formal pre-decision scrutiny in the following categories and circumstances –

- Appointments made by the Portfolio Holder where there is only one nominee;
- Local schemes costing less than £35k which affect only one ward, e.g. minor highways schemes, where all ward Councillors are in support of the proposal;
- Contract extensions where there are no performance issues with the contractor and the contract includes a provision to extend;
- Contract awards where there has been a gateway review and the award is proposed to be made to the most economically advantageous tenderer;
- Contract waivers where the Portfolio Holder is required to agree single tender action;
- Matters considered by the Executive where further action can appropriately be delegated to a Portfolio Holder;
- Any other matter that the Portfolio Holder can decide under the Scheme of Delegation where there has been no objection from any Member of the relevant PDS Committee.

All these categories of decision will be subject to the Portfolio Holder circulating his proposed decision to all Members in advance by email as a “minded to” decision; any Member may request that a matter be referred to the relevant PDS Committee before a decision is taken.

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## 14. Budget and Policy Framework Procedure Rules

### 1. The framework for Executive decisions

The Council will be responsible for the adoption of its budget and policy framework as set out in this **Chapter**. Once a budget or a policy framework is in place, it will be the responsibility of the Executive to implement it.

### 2. Process for developing the framework

The process by which the budget and policy framework shall be developed is:

#### **Consultation by Executive and PDS Committee conflict resolution by simple majority**

- (a) Before a plan/strategy/budget needs to be adopted, the Executive will publish initial proposals for the budget and policy framework. Details of the Executive's consultation process shall be included in relation to each of these matters in the Forward Plan. Any representations made to the Executive shall be taken into account in formulating the initial proposals, and shall be reflected in any report dealing with them.
- (b) The Executive's initial proposals shall be referred formally to the relevant PDS Committee for consideration and comment. The proposals will be referred by sending a copy to the proper officer who will forward them to the Members of the relevant PDS Committee. The relevant PDS Committees shall report to the Executive on the outcome of its considerations at the next available Executive meeting unless the Executive considers that there are special factors that make this timescale inappropriate. If it does, it will inform the PDS Committee of the time for response when the proposals are referred to it.
- (c) The plans that are specified in **Chapter 2** must be referred to Full Council. Having considered the report of the PDS Committee, the Executive, if it considers it appropriate, may amend its proposals before submitting them to the Council meeting for consideration. It will also report to Full Council on how it has taken into account any recommendations from the PDS Committee. ~~Conventions will state how the Executive will report at Full Council meeting.~~
- (d) The Council will consider the recommendations of the Executive and may adopt ~~them~~, amend and/or them, refer them back to the Executive for further consideration, or substitute its own proposals in their place.
- (e) The Council's decision will be publicised in accordance with the Access to Information Rules in **Chapter 8** and a copy shall be given to the Leader and Executive Members. The notice of decision shall be dated and shall state either that the decision shall be effective immediately (if the Council accepts the Executive's recommendations without amendment) or (if the Executive's recommendations are not accepted without amendment), that the Council's decision will become effective on the expiry of 5 working days after the publication of the notice of decision, unless the Leader objects to it in that period. If a meeting of the Executive on or after 8<sup>th</sup>

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February submits to the Council matters relating to the adoption of the budget, the decision of Council shall be effective immediately even if it involves any amendments to the Executive's proposals.

- (f) If the Leader objects to the decision of the Council, he/she shall give written notice to the proper officer to that effect prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. Where such notification is received, the proper officer shall convene a further meeting of the Council to reconsider its decision and the decision shall not be effective pending that meeting.
- (g) The Council meeting must take place within 5 working days of the receipt of the Leader's written objection. At that Council meeting, the decision of the Council shall be reconsidered in the light of the objection, which shall be available in writing for the Council.
- (h) The Council shall at that meeting make its final decision on the matter on the basis of a simple majority. The decision shall be made public in accordance [the Access to Information Rules](#) in **Chapter 8**, and shall be implemented immediately.
- (i) In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the Executive, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the budget and policy framework are reserved to the Council.

### 3. **Decisions outside the budget or policy framework**

- (a) Subject to the provisions of paragraph 5 (virement) the Executive, Committees of the Executive, individual members of the Executive and any officers, or joint arrangements discharging Executive 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 4 below.
- (b) If the Executive, Committees of the Executive, individual Members of the Executive and any officers, or joint arrangements discharging Executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Finance 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. The Monitoring Officer and/or the Chief Finance Officer will consult with the relevant Chief Officers regards appropriate advice. If the advice of the Monitoring Officer and/or Chief Finance Officer 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 paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.



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#### 4. **Urgent decisions outside the budget or policy framework**

- (a) The Executive, a Committee of the Executive, an individual Member of the Executive or officers, or joint arrangements discharging Executive 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 chairperson of the relevant PDS 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 chairperson of the relevant PDS 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 chairperson of the relevant PDS Committee the consent of the Mayor must be sought.

- (b) Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

#### 5. **Virement**

- (a) The financial regulations shall state the budget heads of the Council.
- (b) Steps taken by the Executive, a Committee of the Executive, an individual member of the Executive or officers, Area Committees or joint arrangements discharging Executive functions to implement Council policy shall not exceed those budgets allocated to each budget head. However, such bodies or individuals shall be entitled to vire across budget heads. The financial regulations of the Council will specify the virement limits of each decision making body or individual and their ability to increase the budget. Beyond that limit, approval to any virement across budget heads shall require the approval of the full Council.

#### 6. **In-year changes to policy framework**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Executive, a Committee of the Executive, an individual Member of the Executive or officers, or joint arrangements discharging Executive functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- (a) which will result in the changes to, closure or discontinuance of a service or part of service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;

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- (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.

**7. Call-in of decisions outside the budget or policy framework**

- (a) Paragraph 16 of the Policy Development and Scrutiny Procedure Rules (in **Chapter 4**) states the procedure for calling-in an Executive decision. Any five Members of the Council can call-in an Executive decision which must then be referred to the PDS Committee for consideration.
- (b) Where the PDS Committee are of the opinion that an Executive decision is, or if made would be, contrary to the 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 Finance Officer.
- (c) If the advice of the Monitoring Officer and/or the Chief Finance Officer is that the decision would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, the PDS Committee shall refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 5 days of the request by the PDS committee. At the meeting it will receive a 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 Executive 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 Members in the normal way;  
  
*Or*
  - ii) amend the council's financial regulations or policy concerned to encompass the decision or proposal of the body or individual responsible for that Executive 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 Members 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 Executive to reconsider the matter in accordance with the advice of either the Monitoring Officer/Chief Finance Officer.

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## 15. The Executive Portfolios

~~(Required by the Local Government Act 2000 (Constitution)~~

~~(England) Direction 2000 – paragraph 3h.)~~

The Leader will appoint or remove Portfolio Holders and allocate portfolio responsibilities in accordance with **this Chapter** of the Constitution ~~and the Executive Procedure Rules~~. Changes can be made by the Leader for insertion without the need to formally change the constitution at Council

All Portfolio Holders will provide an integrated response to future challenges; engage in appropriate partnerships, and deliver a ‘whole Council’ response on the quality of life and wellbeing needs of clients and communities.

Current Portfolio Holder responsibilities are as follows -

### **1. Resources, Commissioning and Contract Management**

This Portfolio is concerned with the delivery of the Council’s financial strategy and monitoring the revenue and capital budgets; the Council’s land and property including the sale of Council assets; Biggin Hill Airport; information and communication technology; procurement; human resources strategy and registrars.

### **2. Adult Care and Health Services**

This Portfolio is concerned with care services for adults and older people; learning disabilities; health; joint commissioning and mental health.

### **3. Children, Education and Families**

This Portfolio is concerned with care services for children and families and all the Council’s education services including school admissions; education welfare services; special educational needs; early years development; standards and effectiveness in schools and youth offending.

### **4. Public Protection and Enforcement**

This Portfolio is concerned with anti-social behaviour; environmental health and trading standards; partnership with the police and drug action.

### **5. Renewal, Recreation and Housing**

This Portfolio is concerned with town centres; business regeneration and employment opportunities; further education and lifelong learning; leisure, culture and libraries; planning and building control; and housing.

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**6. ~~Sustainability, Green Services and Open Spaces~~ Environment**

This Portfolio is concerned with sustainability, street services, waste and re-cycling and parks & open spaces.

**7. Transport, Highways and Road Safety**

This portfolio is concerned with transport, highways development, traffic, road safety and parking.

The Leader shall ensure that any changes to the above allocation of portfolios and responsibilities is updated as soon as is practically possible to do so and in addition to any other notification required by the Constitution the Leader shall provide the Monitoring Officer with written notice of the change to allow this part of the Constitution to be updated.

## 16. Responsibility for Functions

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and subsequent Regulations give effect to section 13 of the Local Government Act 2000 by specifying which functions are not to be the responsibility of the Executive, which may (but need not) be the responsibility of the Executive (the “local choice functions”) and which are to some extent the responsibility of the Executive. All other functions not so specified are to be the responsibility of the Executive. These Executive arrangements make clear how these distinctions are given effect by setting out the local choice functions identifying:

- (a) the responsibilities of the Council and / or its committees; and
- (b) the responsibilities of the Executive; and
- (c) those functions which are not the responsibility of the Executive to a specified extent.

Those functions which are delegated on to an officer are included in the Scheme of Delegation to Officers in **Chapter 6** of this Constitution.

### i. Responsibility for Local Choice Functions

- (a) The Council has determined that all local choice functions contained in Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (to be known as the “Functions Regulations”) are to be Non-Executive functions, ~~except for Best Value Reviews which shall be both an Executive and Non-Executive function;~~ and
- (b) That all local choice functions contained in Schedule 3 of the Functions Regulations are to be Non-Executive functions.

### ii. Responsibility for Council Functions

The Council has delegated the responsibilities and functions to the Committees and Sub-Committees named below and these delegations will include appointment of Councillors to all relevant outside bodies that fall within the Council’s policy for making such appointments. These Committees may consider and decide any matter of relevant Non-Executive business referred to the Committee by a Sub-Committee or a Chief Officer.

<u>Committee</u>	<u>Functions</u>	<u>Delegation of Functions</u>
<u>General Purposes and Licensing Committee (and Sub-Committees).</u>	<u>All the functions in the Functions Regulations relating to Health and Safety, Public Rights of Way, non-executive functions - trees, hedgerows and pavements, elections and Bye-laws and all other non-Executive Functions not assigned to any other Committee or reserved to Council. These functions are specified in detail in <b>Chapter 5</b>.</u>	<u>Functions which are delegated on, to an officer, and the limits on that delegation are set out in this <b>Chapter 6</b>.</u>

	<u>All the functions of the Council set out in Part B of Schedule 1 of the Functions Regulations. These functions are specified in detail in <b>Chapter 5.</b></u>	
<u><b>Audit and Risk Management Committee</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Pensions Committee</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Appeals Sub-Committee</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Development Control Committee</b></u>	<u>Planning and conservation fFunctions relating to town and country planning and development control as specified in Part A of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (“the Functions Regulations”). These functions are specified in detail in <b>Chapter 5.</b></u>	<u>Functions which are delegated on, to an officer, and the limits on that delegation are set out in this <b>Chapter 6.</b></u>
<u><b>Plans Sub-Committees</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Standing Advisory Council on Religious Education (SACRE)</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Urgency Committee</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Health &amp; Wellbeing Board</b></u>	<u>See <b>Chapter 5</b></u>	
<u><b>Standards Committee</b></u>	<u>The promotion and maintenance of high standards of conduct within the Council.</u> <u>To advise the Council on the adoption or revision of its Members’ Code of Conduct. These functions are specified in detail in <b>Chapter 5.</b></u>	

### iii. Responsibility for Executive Functions

Other than those matters reserved to the Council or delegated to a Non-Executive Committee or to a Chief Officer as a Non-Executive function, all other remaining functions are Executive functions.

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## 1.9 Functions exercised by the full Executive

- a) Taking decisions on the Council's areas of policy priority.
- b) The approval of the Budget (Revenue and Capital) for recommendation to the Council.
- c) Strategic leadership of the Council's financial strategy.
- d) Proposed variations to the budget requiring recommendations to the Council
- e) Budget monitoring during the course of the financial year.
- f) Recommending to Full Council all plans forming part of the Policy Framework which require the Council's approval.
- g) Approval of all plans forming part of the Policy Framework which do not require referral to Full Council.
- h) Recommending sSignificant variations to all such plans forming part of the Policy Framework.
- i) any decision which would be contrary to the approved budget or approved Policy Framework; or any recommendation to the Council in respect of any such proposed decision.
- j) The consideration and determination of matters arising from any Best Value Review.
- k) The consideration and determination of any decision which has been referred back to the Executive by the Council or by a Policy, Development & Scrutiny Committee under the "call in" procedure; regardless of whether the original decision was taken by the Executive, an Executive Committee or by an individual Member of the Executive.
- l) Any decision which materially involves or has a significant impact on more than one Portfolio
- m) Any decision which is not specifically identified as being the responsibility of a Portfolio holder or Chief Officer.
- n) The provision or closure of any Council facility, particularly but not exclusively, the following:
  - a. schools and any other educational facility
  - b. libraries, sports centres, museums, parks and any other recreational facility
  - c. homes and similar facilities for children, young persons and the elderly
  - d. any facility for the disposal or treatment of waste and transport depots
  - e. the provision of a new highway for the purposes of vehicular traffic

provided that this paragraph shall not include the closure of any highway unless it has a significant impact on people working or living in an area comprising two or more wards.

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Excluding decisions delegated under the Scheme of Delegations to Chief Officers, all other Executive decisions shall be taken by the member of the Executive with Portfolio responsibility for the matter in question. It shall always be open to the member of the Executive with portfolio responsibility to refer a matter to the full Executive for decision.

The Executive may, from time to time, set up Executive Committees for stipulated purposes and may delegate to such Executive Committees responsibility for any Executive decision which would otherwise come within the responsibility of a Portfolio Holder or a Chief Officer.

The exercise of all Executive functions shall be subject to the following:

- the Budget or Policy Framework as determined from time to time by the Council (subject to the powers of the Executive (1) to recommend to the Council the implementation of decisions which would be contrary to the approved budget or approved Policy Framework; or (2) to take such decisions on the grounds of urgency in accordance with the statutory procedure)
- Financial Regulations



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## 17. Joint arrangements

### 17.1 Arrangements to promote well being

The Council or the Executive 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.

### 17.2 Joint arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions which are not Executive functions in any of the participating authorities, or advise the Council. [Such arrangements may involve the appointment of a joint Committee with these other local authorities]
- (b) The Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint Committees with these other local authorities.
- (c) Except as set out below, the Executive may only appoint Executive Members to a joint Committee and those Members need not reflect the political composition of the local authority as a whole.
- (d) The Executive may appoint Members to a joint Committee from outside the Executive where in the following circumstances:  
  
\_the joint Committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population.  
  
In such cases, the Executive may appoint to the joint Committee any Councillor who is a Member for a Ward which is wholly or partly contained within the area. The political balance requirements do not apply to such appointments.
- (e) Details of any joint arrangements including any delegations to joint Committees will be found in **Chapter 5** of this Constitution.

### 17.3 Access to information

- (a) The Access to Information Rules in **Chapter 8** of this Constitution apply.

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- (b) If all the Members of a joint Committee are Members of the Executive in each of the participating authorities then its access to information regime is the same as that applied to the Executive.
  - (c) If the joint Committee contains Members who are not on the Executive of any participating authority then the access to information rules in Part V of the Local Government Act 1972 will apply.

#### **17.4 Delegation to and from other local authorities**

- (a) The Council may delegate non-Executive functions to another local authority.
- (b) The Executive may delegate executive functions to another local authority or the Executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting for non-executive functions or the Executive for executive functions.

#### **17.5 Contracting out**

The Council or the Executive may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or 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.