

## Part 3 - Responsibility for Functions

Source:

*This part is required under Article 4 and Article 7 of this Constitution; Section 13, Local Government Act 2000, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended); The Local Government Act 2000 (Constitutions) (England) Direction 2000 & takes into account the Secretary of State's Guidance, Chapter 5.*

### TABLE 1: Responsibility for Local Choice Functions

**Regulation:** These are functions which may be (but need not be) the responsibility of an authority's executive (i.e. the Cabinet) identified in *The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Schedule 2, Regulation 3(1)*.

**Explanation:** These functions are sometimes called Local Choice Functions because the Council can decide whether the Cabinet should or should not be the decision making body. The Council has allocated these functions as follows:

| Functions from Schedule 2 Reg 3(1)   | Decision making body |
|--|----------------------|
| 1. Any function under a Local Act  | The Executive        |
| 2. Determining an appeal against any decision made by or on behalf of the authority where there is a right of appeal to a Council Committee. (This excludes matters where statutory arrangements exist). | The Executive        |
|  | The Council          |
| 4. Making arrangements for appeals against exclusion of pupils   | The Council          |
| 5-6. Making arrangements for admission appeals by pupils and Governing Bodies  | The Council          |
| 7-8. Do not apply because these functions relate to a Police Authority   | Not applicable       |
| 9. Conducting best value reviews   | Not applicable       |

| Functions from Schedule 2 Reg 3(1)   | Decision making body |
|--|----------------------|
| (Repealed after 30 December 2007)  |                      |
| 10. Any function relating to contaminated land   | The Council          |
| 11. Any function relating to the control of pollution or the management of air quality   | The Council          |
| 12. Any function relating to the abatement of statutory nuisances  | The Council          |
| 13. Any function relating to noise nuisances   | The Council          |
| 14. Powers of inspection to detect statutory nuisances   | The Council          |
| 15. Investigation of complaints of statutory nuisances   | The Council          |
| 16. Power to obtain information about interests in land under the Town & Country Planning Act 1990 (sec.330)   | The Council          |
| 17. Power to obtain information about persons with interests in land under Local Government (Miscellaneous Provisions) Act 1976                                    | The Council          |
| 18. Highways agreements  | The Council          |
| 19. Appointments to external bodies and the revocation of such appointments.   | The Council          |
| 20. The making of agreements with other local authorities for the placing of staff at the disposal of those authorities  | The Executive        |
| 21. Does not apply as this function relates to Harbour Authorities   | Not applicable       |
| 22. Powers in respect of the Council's Local Area Agreement under sections 106,110, 111 and 113 of the Local Government and Public Involvement in Health Act 2007. | The Executive        |

## TABLE 2: Responsibility for Council Functions

**Regulations:** Functions which must not be the responsibility of an authority's executive from the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Schedule 1 Regulation 2(1)

**Explanation:** The law requires the following functions must be the responsibility of the Council and not the Executive.

The Council can discharge these functions itself or may delegate one or more functions to a committee or sub-committee of councillors, an officer of the Council or another authority. The Full Council may always exercise powers it has delegated to the other bodies or persons set out above. It may also discharge its functions jointly with one or more other local authorities.

Delegations to Officers are listed in this Part, the Articles and the terms of reference of committees in Part 7 of this Constitution.

| Function   | Decision making body   |
|--|--|
| Functions relating to elections as listed in Section D of Schedule 1 to the Regulations and as may be amended by law from time to time                               | The Council, which has made delegations to Officers within this Constitution and the Council's scheme of delegation. |
| Functions relating to name and status of areas or individuals as listed in Section E of Schedule 1 to the Regulations and as may be amended by law from time to time | The Council  |
| Functions relating to making, amending, revoking or re-enacting byelaws as listed in section F of schedule 1 to the Regulations.                                     | The Council  |
| Functions relating to promoting or opposing local or personal Bills as listed in Section G of Schedule 1 to the Regulations  | The Council  |

|   |  |
|---|--|
| Functions relating to local government pensions as listed in Section H. of schedule 1 to the Regulations  | The Council has delegated powers to the Pension Committee  |
| Miscellaneous functions as listed in section I. of schedule 1 to the Regulations and as may be amended by law from time to time   | The Council  |
| All other non-executive functions (subject to the arrangements listed below and elsewhere in this Constitution)   | The Council being made up of all elected Councillors and with the power to delegate to Committees, subcommittees or officers.  |
| Functions relating to town and country planning and development control as listed in section A. of schedule 1 to the Regulations and as may be amended by law from time to time | The Council has delegated powers to the Planning Committee. The Committee has made delegations to Officers, which are included within its terms of reference and the scheme of delegation.   |
| Functions relating to licensing and registration as listed in section B. of schedule 1 to the Regulations and as may be amended by law from time to time                        | The Council has delegated powers to the Licensing Act 2003 and Gambling Act and Licensing (General) Committees. The Committees have made delegations to officers, which are included within their terms of reference and the scheme of delegation. |
| Functions relating to Health and Safety at work as listed in Section C of Schedule 1 to the Regulations and as may be amended by law from time to time                          | Audit and Governance Committee insofar as issues fall within the remit / Chief Executive shall approve the Health and Safety Policy.   |

### TABLE 3: Responsibility for Executive Functions

1. The Local Government Act 2000 (as amended) provides that all functions of a local authority, except (a) those specified by law or in this Constitution as non-executive functions shall be discharged by the Executive.
2. The Executive shall consist of an Executive Leader (the Leader) appointed by Full Council and 2 to 9 elected members (the Cabinet) appointed by the Leader. The Executive will be known collectively as the Cabinet.
3. The Leader shall appoint one Cabinet member as Deputy Leader. The Deputy Leader will be able to exercise the powers of the Leader of the Council if:
  - 3.1.1 the Leader is unable to act or
  - 3.1.2 the office of Leader of the Council is vacant.
4. If both the Leader and Deputy Leader are both unable to act, the Cabinet as a whole must exercise the Leader's powers or arrange for a member of the Cabinet to act in his/her place.
5. The Leader shall determine how all executive powers shall be discharged. S/he may:
  - (a) discharge any of those functions, or
  - (b) arrange for the discharge of any of those functions—
    - (i) by the executive collectively,
    - (ii) by another member of the executive,
    - (iii) by a committee of the executive, or
    - (iv) by an officer of the authority.
6. Executive functions may also be discharged by another arrangement allowed by law including by another authority, by an area committee or jointly with one or more other authorities.

7. The Director of Governance and Law will maintain and publish a record of all arrangements made under this Part including but not limited to a list of Cabinet members, their responsibilities and delegated powers. Where appropriate, the Council's scheme of delegation may set out these arrangements.

## Delegations to Officers

### 1. Introduction

- 1.1. For the purposes of this section, the officers to whom delegations are made are as follows:
- Chief Executive and Statutory Officers
  - Deputy Chief Executive and Strategic Directors and Directors
  - Other Staff
  - Proper Officers for the purposes of specific legislation (as set out below) and as defined by section 270(3), Local Government Act 1972.
- 1.2 The delegations set out below apply to those functions which have not, by virtue of this Constitution or any other instrument, been reserved to Council or Cabinet and any committees or sub-committees thereof.
- 1.3 Delegations set out in this section are in addition to any delegations made in Part 2, the Articles, and/or Part 7, Terms of Reference, of this Constitution.

### 2. Powers of the Chief Executive

- 2.1 To exercise authority over the Strategic Directors, Directors and Heads of Service, including allocating Directors' portfolios.
- 2.2 To exercise the powers delegated to any Strategic Director or Director or other members of staff so far as the law allows.
- 2.3 To carry out the functions of the Council for civic aid and emergency planning and to take any action, including incurring expenditure, in connection with an emergency or a disaster in the borough.

- 2.4 To undertake any other functions necessary for the carrying out of the role of Chief Executive, within any existing legislative and policy constraints.

### **3. The Role of Deputy Chief Executive**

- 3.1 The Chief Executive following consultation with the Leader of the Council (and where there is a joint administration of two or more political groups with the Deputy Leader) may appoint one of the Strategic Directors to the role of deputy chief executive on such terms and conditions including remuneration, as the Chief Executive sees fit.

- 3.2 The Deputy Chief Executive shall:

- 3.2.1 Undertake any duties delegated to him/her by the Chief Executive

- 3.2.2 Perform the duties of the Chief Executive set out in this Constitution either:

3.2.2.1 Upon the instruction of the Chief Executive; or

3.2.2.2 When the Chief Executive is absent from his/her duties for whatever reason for a period of 5 consecutive working days or more. During such times, the Deputy Chief Executive shall undertake any of the powers of the Chief Executive set out in this Constitution, except where the Constitution already provides for deputising arrangements (for example Proper Officer Functions)

- 3.3 The Chief Executive may terminate any appointment under paragraph 3.1 without notice following consultation with the Leader (and where there is a joint administration with the Deputy Leader).

- 3.4 The Chief Executive shall record in writing any arrangements made under this section and provide copies to:

- 3.4.1 The Monitoring Officer, Chief Finance Officer and Strategic Directors, and Directors;

3.4.2 The Leader and Deputy Leader.

#### **4. Powers of Strategic Directors and Directors**

4.1 The Strategic Directors and Directors of the Council and their areas of responsibility are referred to in Article 12 of this Constitution. In this Constitution, the term Strategic Director and Director includes any officer who reports directly to the Chief Executive.

4.2 All Strategic Directors and Directors are delegated all those powers necessary to act within the assigned portfolio of responsibilities, as set out in Article 12 and Part II of this Constitution. Note that this delegation is subject to the general provisions and limitations set out in this Constitution.

4.3 A Strategic Director or Director may further delegate or authorise any of the powers delegated to him or her under this Constitution or any other applicable scheme of delegation, in so far as is legally permissible and in so far as not already delegated by virtue of this Constitution. A formal scheme of delegation or authorisation will be maintained within each Directorate. Any such scheme of delegation or authorisation must be recorded in writing; and made available to the Monitoring Officer who may thereby access the record of all delegations,

#### **5. Powers of staff**

5.1 All staff shall be delegated all those powers necessary to carry out those functions specified in their respective role profiles, subject to the general provisions and limitations set out in this Constitution.

#### **General provisions and limitations**

5.2 Apart from those powers set out below which have been generally or specifically delegated to staff, any remaining functions which have not been, under this or any other current scheme of delegations, specifically reserved to Council, Cabinet or any committees or sub-committees thereof are delegated to officers.

5.3 Staff shall exercise powers under this scheme in compliance with:

- The rules of procedure set out in Part 8 of this Constitution;
  - Corporate policies and strategies,; and
  - Any additional conditions imposed either by the Council or by statute or any statutory code of conduct.
- 5.4 The exercise of the powers delegated under this Constitution or any other scheme of delegation to or by staff involving the incurring of expenditure is subject to there being sufficient approved provision within their budget to cover that expenditure.
- 5.5 Each Strategic Director or Director shall have all the powers and duties delegated to the Heads of Service or other staff within his/her portfolio, who are assigned to him or her, so far as is legally permissible.

## **6. Monitoring Officer and Chief Finance Officer**

- 6.1 The functions of the Monitoring Officer and Chief Finance Officer are set out in Articles 12 and 14. So far as not specified by legislation, the Monitoring Officer and Chief Finance Officer are delegated all powers necessary to carry out their statutory functions.

## **Proper Officer Functions**

### **1. Meaning of Proper Officer Functions**

- 1.1 The Council has approved and adopted the appointment of the following officers as proper officers, as described in the following specified sections of the relevant Acts of Parliament or regulations. Proper officer is defined for most legislation by s.270 (3) Local Government Act 1972 as an officer appointed for that purpose by that body or for that area, as the case may be.
- 1.2 The deputy proper officer is given in brackets after the proper officer. The deputy proper officer is appointed to act where the proper officer is absent and/or unable to act for any reason. Where neither the designated proper officer nor the designated deputy proper officer is able to act, or if there is no specified designated proper officer or

deputy proper officer, the Chief Executive may designate an appropriate person to act as proper officer or deputy proper officer. If the Chief Executive is unable to act, this power shall be delegated to the Director of Governance and Law or, if the Director of Governance and Law is unavailable, to the Deputy Monitoring Officer.

## Local Government Act 1972

| Section               | Description  | Proper Officer                                   |
|-----------------------|--|--|
| 83(1) – (4)           | Officer to whom persons elected to any of the following offices of the Council shall make declaration of acceptance of office: Mayor, Deputy Mayor, Councillor | Director of Governance and Law (Chief Executive) |
| 84                    | Officer to whom a person elected to any office under the Council may give written notice or resignation  | Director of Governance and Law (Chief Executive) |
| 88(2)                 | Officer who may convene a meeting of the Council for the election to fill a vacancy  | Chief Executive (Deputy Chief Executive)         |
| 89(1)(b)              | Officer who may receive notice in writing of a casual vacancy in the office of Councillor from two local Government electors                                   | Chief Executive (Director of Governance and Law) |
| 100B(2)               | Officer who may think fit to exclude from reports open to inspection parts relating to items during which the meeting is likely not to be open to the public   | Director of Governance and Law                   |
| 100B(7)(c)            | Officer who may think fit to exclude from reports open to inspection parts relating to items during which the meeting is likely not to be open to the public   | Director of Governance and Law                   |
| 100C(2)               | Officer responsible for preparing a written summary of those parts of the committee proceedings which disclose exempt information                              | Director of Governance and Law                   |
| 100D(1)(a) and (5)(a) | Officer responsible for identifying background papers and compiling list of such documents   | Director of Governance and Law                   |
| 100F(2)               | Officer making decision as to documents disclosing exempt information which are not required to be open to inspection by council members                       | Director of Governance and Law (Chief Executive) |
| 115                   | Officer to whom all officers shall pay monies received by them and due to the local authority  | Strategic Director, Finance and                  |

| Section                               | Description   | Proper Officer                                    |
|---------------------------------------|---|---|
|                                       |   | Governance  |
| 146(1)                                | Officer authorised to produce a statutory declaration specifying securities and verifying name change of authority                | Strategic Director, Finance and Governance        |
| 204(3)                                | Officer to whom notice of application for a Justices Licence under Schedule 1 of the Licensing Act 1964 should be given           | Chief Executive or Director of Governance and Law |
| 210(6) and (7)                        | Officer in whom power in respect of a charity will vest as at 1 April 1974  | Director of Governance and Law                    |
| 225(1)                                | Officer with whom documents may be deposited pursuant to law to make notes or endorsements and give acknowledgements or receipts. | Director of Governance and Law                    |
| 229(4) and (5)                        | Officer who shall certify that a document is a photographic copy of a document in the custody of the Council                      | Director of Governance and Law                    |
| 234(1)                                | Officer who may authenticate documents  | Director of Governance and Law                    |
| Para 4(2)(b) of Part 1 of Schedule 12 | Officer who may sign a summons to council meetings  | Chief Executive (Deputy Chief Executive)          |
| Para 4(2)(b) of Part 1 of Schedule 12 | Officer who may receive notice from a member of address to which a summons to a meeting is to be sent                             | Chief Executive (Director of Governance)          |

### Local Government Act 1974

| Section | Description  | Proper Officer                 |
|---------|--|--------------------------------|
| 30 (5)  | Officer responsible for arranging publication in newspapers of notice of Local Commissioner's report on investigation of a complaint | Director of Governance and Law |

### Local Government (Miscellaneous Provisions) Act 1976

| Section | Description   | Proper Officer                 |
|---------|---|--------------------------------|
| 41      | Officer responsible for certifying copies of resolutions, minutes and other documents | Director of Governance and Law |

### Buildings Act 1984

## London Local Authorities Act 2000, as amended

| Section           | Description   | Proper Officer                                      |
|-------------------|---|---|
| 78 (8) BA<br>1984 | Officer responsible for taking immediate action in relation to dangerous buildings          | Head of Building Control                            |
| 45 LLA<br>2000    | Officer responsible for taking action immediate action in relation to dangerous structures. | (Strategic Director, Neighbourhoods and Commercial) |

## Local Government Finance Act 1988

| Section | Description  | Proper Officer                             |
|---------|--|--|
| 114     | Officer responsible for making financial report to the authority | Strategic Director, Finance and Governance |

## Local Government (Committees and Political Groups) Regulations 1990

| Section       | Description   | Proper Officer                                   |
|---------------|---|--|
| 8 (1) and (5) | Officer to whom notice is delivered about the constitution of a political group, or the change of name of a political group | Chief Executive (Director of Governance and Law) |
| 9 and 10      | Officer to whom notice is delivered about a Councillor's membership of, or cessation of membership of, a political group    | Chief Executive (Director of Governance and Law) |
| 13            | Officer to whom the wishes of a political group are expressed   | Chief Executive (Director of Governance and Law) |
| 14            | Officer responsible for notifying a political group about allocations and vacancies of seats                                | Director of Governance and Law                   |

## The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000

| Section | Description   | Proper Officer                                   |
|---------|---|--|
| 3 (1)   | Officer responsible for producing a written statement of all executive decisions made at a public or private meeting of Cabinet, including the information specified in regulation 3 (2).   | Chief Executive (Director of Governance and Law) |
| 5 (1)   | Officer responsible for ensuring that a copy of the following documents is available for public inspection: <ul style="list-style-type: none"> <li>• the written statement referred to in regulation 3 above</li> <li>• part or all of any report considered by the decision maker and relevant to the decision made</li> </ul> | Chief Executive (Director of Governance and Law) |

|                    |   |  |
|--------------------|---|--|
| 6                  | Officer responsible for compiling a list of background papers to the report referred to in regulation 5 above. This officer is the proper officer referred to in rule 8 of the Access to Information Procedure Rules set out in Part 8 of this Constitution   | Chief Executive (Director of Governance and Law) |
| 12 (2)             | Officer who may exclude whole or part of any report provided for public inspection under regulation 11 (1), where the part excluded relates to a matter for which the proper officer considers a meeting is not likely to be open to the public. This officer is the proper officer referred to in rule 11 of the Access to Information Procedure Rules set out in Part 8 of this Constitution  | Chief Executive (Director of Governance and Law) |
| 11 (7) (c)         | Officer who may supply to a newspaper a copy of any document supplied to Cabinet members, if he or she thinks fit.  | Chief Executive (Director of Governance and Law) |
| 12 (1)             | Officer responsible for publishing the information relating to key decisions specified in regulation 12 (1). This officer is the proper officer referred to in rule 14 of the Access to Information Procedure Rules set out in Part 8 of this Constitution.   | Director of Governance and Law                   |
| 15 (1)             | Officer responsible for doing the following where the inclusion of a matter on the forward plan is impracticable and the matter would be a key decision: <ul style="list-style-type: none"> <li>▪ giving notice to the Chair of the relevant overview and scrutiny committee</li> <li>▪ making that notice available for public inspection</li> </ul> This officer is the proper officer referred to in rule 15 of the Access to Information Procedure Rules set out in Part 8 of this Constitution | Director of Governance and Law                   |
| 17 (3) and (4)     | Officer responsible for determining whether compliance with regulations 17 (1) or 17 (2) would involve the disclosure of either exempt information or advice provided by a political advisor or assistant   | Director of Governance and Law                   |
| 21 (4) (a) and (b) | Officer who may form an opinion as to whether a document contains or is likely to contain confidential information, exempt information or the advice of a political advisor or assistant  | Director of Governance and Law                   |

## The Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000

| Section | Description  | Proper Officer                 |
|---------|--|--------------------------------|
| 4 (2)   | Officer who publishes the number that is equal to 5 per cent of the number of local government electors for the authority's area | Electoral Registration Officer |

## The Local Authorities (Standing Orders) (England) Regulations 2000

| Section                                | Description   | Proper Officer  |
|--|---|-----------------|
| Paras 5 and 6 of Part II of Schedule 1 | Officer for receiving notification of proposed appointment of certain officers, notifying executive members of that proposed appointment and for receiving and notifying of objections to the proposed appointment. This officer is the proper officer referred to in rule 8 of the Officer Employment Procedure Rules set out in Part 8 of this Constitution | Chief Executive |

## The Local Democracy, Economic Development and Construction Act 2009

| Section   | Description   | Proper Officer   |
|---|---|------------------|
| s.9FB of the Local Government Act 2000 (having been incorporated into that Act by the Localism Act 2011). | To promote the role of the authority's overview and scrutiny committee or committees,<br>(b) provide support to the authority's overview and scrutiny committee or committees and the members of that committee or those committees,<br>(c) to provide support and guidance to—<br>(i) members of the authority,<br>(ii) members of the executive of the authority, and<br>(iii) officers of the authority,<br>in relation to the functions of the authority's overview and scrutiny committee or committees. | Scrutiny Officer |

**Proper officer functions referred to in guidelines issued by the Secretary of State under section 38 of the Local Government Act 2000 (Part 8 of this Constitution)**

| Section                                  | Description   | Proper Officer   |
|--|---|--|
| 17 Access to Information Procedure Rules | Officer who may, when requested to do so on behalf of an Overview and Scrutiny Committee, require Cabinet to submit a report to the Council within such reasonable time as the relevant Overview and Scrutiny Committee specifies | Director of Governance and Law   |
| 2.5 Executive Procedure Rules            | Officer who may place an item on the agenda of the next available meeting of the Cabinet for consideration  | The Monitoring Officer and/or the Chief Financial Officer in pursuance of their statutory duties. In other circumstances, where any two of the Head of Paid Service, Chief Financial Officer and Monitoring Officer are of the opinion that a meeting of the Executive needs to be called to consider a matter that requires a decision, they may jointly include an item on the agenda of an Executive meeting. |

**The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012**

| Section | Description  | Proper Officer                 |
|---------|--|--------------------------------|
| 7 (2)   | If the proper officer thinks fit, there may be excluded from the copy of any report provided pursuant to paragraph (1) the whole, or any part, of the report which relates only to matters during which, in the proper officer's opinion, the meeting is likely to be a private meeting.   | Director of Governance and Law |
| 7 (c)   | If the proper officer thinks fit, to provide to a member of the public or newspaper, in the case of any item on an agenda, a copy of any document in addition to a report supplied to members of the executive in connection with the item   | Director of Governance and Law |
| 10 (1)  | Proper officer to inform the chair of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made under General Exception (Access to Information Procedure Rule 15), and to make available a notice of the decision to be taken.   | Director of Governance and Law |
| 11 (1)  | Decision maker to obtain agreement from the chair of the relevant overview and scrutiny committee or as specified in their absence, to the taking of decision under Special Urgency (Access to Information Procedure Rule 16), and to make available a notice of the decision to be taken.   | Relevant decision maker        |
| 12 (1)  | As soon as reasonably practicable after any meeting of a decision-making body at which an executive decision was made, the proper officer, or if the proper officer was not present at the meeting, the person presiding, must ensure that a written statement is produced for every executive decision made which includes the information specified in 12 (2) of the Regulations.  | Director of Governance and Law |
| 13 (1)  | As soon as reasonably practicable after an individual member has made an executive decision, that member must produce or instruct the proper officer to produce a written statement of that executive decision which includes the information specified in paragraph 13 (2) of the Regulations,  | Director of Governance and Law |
| 14 (1)  | 14.—(1) Subject to regulation 20, after a meeting of a decision-making body at which an executive decision has been made, or after an individual member or an officer has made an executive decision the proper officer must ensure that a copy of— (a) any records prepared in accordance with regulations 12 or 13; and (b) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with regulations 12 or 13 or, where only part of the report is relevant to such a decision, that part, must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the relevant local authority or that authority's website, if it has one. | Director of Governance and Law |
| 15 (a)  | Proper officer to compile a list of the background papers to a report and include it in the report.  | Director of Governance and Law |

|    |  |                                |
|----|--|--------------------------------|
| 16 | Opinions in relation to the additional rights of access to documents for members of local authorities.                   | Director of Governance and Law |
| 20 | Opinions in relation to the confidential information, exempt information and advice of a political adviser or assistant. | Director of Governance and Law |