

# CONSTITUTION - PART 4 - RULES OF PROCEDURE

(Last revised July 2014)

## Executive Procedure Rules

### **1.1 WHO MAY MAKE EXECUTIVE DECISIONS**

The Leader may provide for executive functions to be discharged by:

- i) the Cabinet as a whole;
- ii) a committee of the Cabinet;
- iii) an individual member of the Cabinet;
- iv) an officer;
- v) an area committee;
- vi) joint arrangements; or
- vii) another local authority.

### **1.2 DELEGATION BY THE LEADER**

At the annual meeting of the Council, if there is to be a change from the previous municipal year, the Leader will present to the Council a written record of delegations made by him/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:

- i) the names, addresses and wards of the people appointed to the Cabinet by the Leader;
- ii) the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
- iii) the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet 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 Cabinet Members appointed to any joint committee for the coming year; and

vi) 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.

### **1.3 SUB-DELEGATION OF EXECUTIVE FUNCTIONS**

- (a) Where the Cabinet, or a Cabinet Member is responsible for an executive function, they may delegate further to an area committee, joint arrangements or an officer.
- (b) Unless the Leader directs otherwise, a committee of the Cabinet to whom functions have been delegated by the Leader may delegate further to an officer.
- (c) Even where executive functions have been delegated, that does not prevent the discharge of the delegated functions by the person or body who made the delegation.

### **1.4 THE COUNCIL'S SCHEME OF DELEGATION OF EXECUTIVE FUNCTIONS**

- (a) Subject to (b) below the Council's scheme of delegation of executive functions will be subject to adoption by the Council and may only be amended by the Council. It will contain the details required in Article 7 and set out in Part 3 of this Constitution.
- (b) 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 Head of Legal and Governance 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 Cabinet as a whole. The Head of Legal and Governance will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.
- (c) Where the Leader seeks to withdraw delegation from a committee, notice will be deemed to be served on that committee when it is served on the chair.

### **1.5 DEALING WITH CONFLICTS OF INTEREST AND OTHER BARS TO ACTION – DEPUTIES AND SUBSTITUTES**

- (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 Part 5 of this Constitution.
- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in Article 9 of this Constitution, ie by dispensation sought from General Purposes Committee or the Monitoring Officer.

- (c) If the exercise of an executive function has been delegated to a committee of the Cabinet, 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 by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- (d) The procedures for deputisation or substitution due to a conflict of interest or other reason are:-
- (1) Where in the Procedure Rules, Executive Procedure Rules, Financial Rules, Contracts Rules or any other part of the constitution, the Leader of the Council is required to take any action or make any decision and the Leader is unable to do so by reason of:-
- a. absence from the District for any reason;
  - b. ill health;
  - c. the requirement to make a declaration of interest by reason of the Members' Code of Conduct at Part 5 of this constitution;
  - d. personal or other reasons which preclude the Member concerned from being able to undertake Council business

then the Deputy Leader of the Council shall take any such actions or make any decisions required in the place of the Leader of the Council whether for one item of business (a substitution) or for a period of time (a deputisation).

- (2) Where the Deputy Leader of the Council or any other Cabinet Member is required by the said Rules or any other part of this Constitution, to take any action or make any decision and is unable to do so by reason of:-
- a. absence from the District for any reason;
  - b. ill health;
  - c. the requirement to make a declaration of interest by reason of the Members' Code of Conduct at Part 5 of this constitution;
  - d. personal or other reasons which preclude the Member concerned from being able to undertake Council business

then that Cabinet Member shall notify the Leader of the Council who shall immediately appoint another Cabinet Member to carry out the duties of the affected one until their disability from acting has ceased, whether that should be for one item of business (a substitution) or for a period of time (a deputisation).

- (3) Where a Member, other than the Leader of the Council, is to act as a substitute or where a deputy is to be appointed under this rule, then the Leader of the Council shall notify the Head of Legal and Governance of that substitution or deputisation. The Head of Legal and Governance shall make and keep a record of each such notification and advise the relevant Chief Officer of the substitution or deputisation. In the event of a deputy being appointed for a Cabinet Member, the Proper Officer will inform the Council in writing of the name of the deputy and the period of the deputisation.

- (4) In the event of both the Office of Leader and Deputy Leader being vacant or they are unable to act the arrangements set out at paragraph 7.06(f) of Article 7 - The Executive, apply.
- (5) The provisions of this Executive Rule shall also apply to substitute arrangements for Cabinet Member appointments to the outside bodies but only those listed under Section 1(a) of the list of Council Representatives on Outside Bodies relating to Executive Member appointments and substitutions.
- (6) In relation to conflicts of interest these rules apply only in circumstances where the bar on action is absolute under the Council's Code of Conduct for Members in Part 5 of this constitution or the (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089).

## **1.6 CABINET MEETINGS**

The Cabinet will meet at least 12 times per year at times to be agreed by the Leader. The Cabinet will meet at the Council's principal office or another location to be agreed by the Leader.

## **1.7 QUORUM**

The quorum for a meeting of the Cabinet, or its committees shall be not less than three members.

## **1.8 HOW DECISIONS ARE TO BE TAKEN BY THE EXECUTIVE**

- (a) Executive decisions which have been delegated to the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.
- (b) Where executive decisions are delegated to a committee of the Cabinet, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.
- (c) Decisions of the executive will be made in accordance with the Cabinet Protocol set out in Rule 3 below.

## **2. FORM AND CONTENT OF THE MEETING**

### **2.1 Chair**

The Executive Leader will preside at any meeting of the Cabinet or its committees at which he/she is present, and in the Leader's absence, the Deputy Executive Leader will do so. In the absence of both, the Cabinet or its committee shall appoint another member to chair the meeting.

## **2.2 Access**

Except as detailed below all Cabinet meetings will be public meetings unless the press and the public are excluded under the Access to Information Rules in Part 4 of the Constitution.

In exceptional circumstances where the nature of the business to be discussed dictates privacy the Cabinet may be called to meet in private session in accordance with Access to Information Procedure Rules in Part 4 of the Constitution. When the Cabinet meets in private session no decision, as defined by law, may be taken and no decision may be considered if it is to be taken within 28 days unless the meeting is a briefing for Cabinet Members upon the matter. Private meetings of Cabinet or any Executive decision-making body as defined under The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 shall be convened in accordance with paragraph 5 of those Regulations.

## **2.3 Agenda**

At each meeting of the Cabinet 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 Cabinet (whether by an overview and scrutiny committee or by the Council) for reconsideration in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- iv) consideration of memoranda of report from the Overview and Scrutiny Commission or Scrutiny Panel; and
- v) matters set out in 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.

## **2.4 Putting Items on the Cabinet Agenda**

- (a) Subject to the ensuing paragraphs the Leader will decide upon the agenda for the meetings of the Cabinet. He/she may put on the agenda of any Cabinet meeting any matter whether or not authority has been delegated to the executive. The Head of Legal and Governance will comply with the Leader's requests in this respect.
- (b) The Head of Legal and Governance will make sure that an item is placed on the agenda of the next available meeting of the Cabinet where a relevant overview and scrutiny committee or the full Council have resolved that an item

be considered by the Cabinet. The Head of Legal and Governance will notify the Chair of the Overview and Scrutiny Commission of the date of the meeting which will consider the reference from the Council or the committee and the Chair will be entitled to attend the meeting and speak to the item.

- (c) Any member of the Council may ask the Leader to put an item on the agenda of the Cabinet meeting for consideration, and if the Leader agrees the item will be considered at the next available meeting. The notice of the meeting will give the name of the Councillor who asked for the item to be considered. The Councillor will be invited to attend the meeting, whether or not it is a public meeting.
- (d) The Monitoring Officer and/or the Chief Financial Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the Head of Legal and Governance to call such a meeting in pursuance of their statutory duties.
- (e) 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 Cabinet needs to be called to consider a matter which requires a decision, they may jointly include an item on the agenda of a Cabinet meeting. If there is no meeting of the Cabinet soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

## **2.5 Consultation**

- (a) All reports to the Cabinet from any member of the Cabinet or an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and the Overview and Scrutiny Commission or Panels 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.
- (b) The Executive may consult any committee of the Council upon any matter within the functions of the Executive before exercising their decision making powers. This right is exercisable regardless of whether the Overview and Scrutiny Commission or Scrutiny Panel has asked to be consulted or has investigated a particular matter.

## **3.0 EXECUTIVE POWERS**

### **3.1 Extent of Executive Powers**

- a) Subject to (g) below no executive decision whether by the Cabinet Member individually or by the Cabinet may be taken unless it falls within the policy framework and budget set by Council.

- b) The Executive does not have decision making powers in relation to any matter which by law or by resolution of the Council has been retained by the Council or falls wholly within the decision making powers of the Council or of any Committee of the Council or within the General Scheme of Delegation to Officers of functions of the Council.
- c) Cabinet Members shall act within the Protocol for the Operation of Cabinet forming part of this Rule.
- d) Subject to other instructions from the Leader of the Council, Cabinet Members are fully empowered to take decisions relating to issues with a financial value below £100,000, individually provided the decision falls wholly or mainly within the parameters of their portfolio. A Cabinet Member must liaise with any Cabinet Member whose portfolio is also partially affected by such a decision.
- e) The Cabinet has granted delegated powers to the Officers in the circumstances set out in the Scheme of Delegation to Officers in relation to Executive Functions in part 3 of this Constitution. In addition, detailed rules on the delegation of power to an Officer, in particular circumstances, to make a decision are set out at paragraph 7.02 of Article 7 and in the Executive Procedure Rules in Part 7 of this Constitution.
- f) The Executive shall consider whether to consult the relevant overview and scrutiny committee
  - i) before recommending a change in the Council policy framework;
  - ii) to identify whether existing policies are effective in achieving the objectives set for them by the Council;
  - iii) on any aspect of policy development within the remit of the committee;
  - iv) on any other issue within the remit of the committee on which the executive needs guidance, advice or support whether on policy formulation or otherwise.
- g) ***Virement and Supplementary Estimates***
  - (i) Cabinet Members have authority to approve proposals from the Management Board to vire monies exceeding £25,000 between departments or between business units within a department.
  - (ii) The Cabinet may approve the use of virement from income or expenditure for the purpose of paying performance bonuses or other emoluments to staff at Harrogate International Centre.
  - (iii) Where proposed expenditure outside budget is of such magnitude that the appropriate Director is able to demonstrate to the satisfaction of the Head of Finance that savings cannot be made in any other budget within the Department and Management Board cannot identify savings in one or more other Departmental budgets then Cabinet may approve a supplementary estimate of up to £20,000.

## 3.2 PROTOCOL FOR THE OPERATION OF CABINET

### (a) *Justification*

Generally individual Cabinet Members have full executive powers to act. To attempt to define categories of activity in which the Member cannot act, or cannot act individually in certain circumstances, is fraught with dangers. This cabinet protocol has been devised to delimit the extent of Cabinet Member powers.

Cabinet Members with full powers are more “accountable”, but decisions must be governed both by a requirement for officers to report first and by rules on the need for cabinet confirmation in a variety of cases.

An executive decision, made by a Cabinet member within the terms of this protocol constitutes a final decision authorising officers to act once it has been validated.

### (b) *Shared Responsibility*

Cabinet will make collective decisions when meeting in full Cabinet. Cabinet Members will share responsibility for individual decisions of all other members of Cabinet. To secure shared responsibility all members of Cabinet will receive all agenda and reports for each others’ decision making meetings.

True collective responsibility will apply only where Cabinet has made a decision in private (not exempt) session. This requires that any Cabinet Member who wishes to express reservations or distance themselves in any way from a decision made by Cabinet in private session is expected to tender their resignation to the Leader of the Council immediately.

### (c) *Collective Decisions*

The following issues require a collective decision:

- (i) those reserved by the Cabinet for collective decisions at the beginning of each municipal year;
- (ii) those where the Leader (or Deputy Leader in absence) instructs the individual Cabinet Member to bring them to Cabinet whether on the Leader’s or Deputy Leader’s own initiative or whether following representations from another Cabinet Member;
- (iii) those which clearly (and significantly) affect two or more portfolios;
- (iv) those above the levels of expenditure agreed by Council in the executive arrangements for individual decisions. Cabinet will decide whether to make the decision or to refer the matter back to the relevant Cabinet Member for decision following discussion in Cabinet;

(d) *Cabinet Support*

The Cabinet Member should usually take individual decisions but there may be occasions when the Member may feel the need to put an item on the Cabinet agenda in order to take a view from colleagues. The agenda report should identify such issues namely:-

- (i) those instigated by the individual Member, where that Member seeks a cabinet view; and
- (ii) where there is a disagreement between the Cabinet Member and the relevant Chief Officer

(e) *Making and Recording of Executive Decisions*

(i) No Cabinet Member shall exercise powers delegated to them to make a decision on a matter unless they have first considered a written report containing:-

- a. technical advice from the relevant Chief Officer
- b. legal advice from the Solicitor to the Council or an assurance from the Solicitor that no legal issue is involved
- c. financial advice from the Head of Finance or an assurance from the Officer that no financial issue is involved.
- d. advice from the Head of Paid Service if any member of staff is or may be affected by the decision to be made.

(ii) Decisions should generally be made in the presence of senior officers except in specific circumstances, such as clear urgency, when they must then be recorded by the individual member; and

(a) telephone conversations constitute being “in the presence”;

(b) “senior officers” are Chief Officers, Executive Officers, and others duly authorised by Chief Officers.

(iii) Protocols should be established within each department to ensure the relevant Cabinet Member knows which officers are authorised to make recommendations. Both Cabinet Members and relevant officers should be aware of who is authorised to make recommendations.

(f) (i) It shall be the responsibility of every Cabinet Member, or Officer making executive decisions specifically delegated to them, to ensure the accuracy of the record of the decision taken in accordance with the Protocol on Recording of Decisions set up by the Council for that purpose.

(ii) No decision which a Cabinet Member takes shall be validated unless it is formally recorded and notified to the Head of Legal and Governance and complies with legal requirements under the Access to Information Rules and

the Protocol on Recording of Decisions. Recording executive decisions is a statutory duty.

(iii) Decisions of Cabinet Members acting under delegated powers must be notified to the Head of Legal and Governance as soon as possible and in any event within 24 hours of the decision being made and shall be recorded and, if lawful, validated as soon as possible, and in any event within one working day, and published.

(iv) The publication of decisions will accord with the Access to Information Rules at Part 4 of this constitution.

(g) *The Final Decision*

Apart from those licensing and other decisions where there is a right of appeal indicated in Part 3 of this Constitution and that appeal is to an appeals panel of the Licensing Committee, any final decision on an executive matter will belong to the executive even if the Cabinet refers the issue to the Council for consideration. Whilst the Council can express a view, the final decision must be made by the executive, provided that the decision is an executive matter and complies with these Rules and all other relevant rules of the Constitution.

### **3.3 FINANCIAL THRESHOLDS FOR KEY DECISIONS**

(a) The Council has fixed the following thresholds for deciding whether an executive decision is a key decision and therefore needs to be shown in the Forward Plan:-

(i) Revenue expenditure of £150,000

(ii) Savings of £50,000

(iii) Capital expenditure of £250,000

(iv) Decisions made by the Chief Executive, in exercise of emergency powers only, £300,000

(b) In calculating whether expenditure is at the threshold level:-

(i) a decision which commits expenditure for more than one financial year will be aggregated to ascertain the expenditure level;

(ii) where expenditure by the Council is pooled with expenditure of other agencies the aggregate figure is not to be used unless the funds from partner agencies will first be paid over to the Council and may therefore properly count as expenditure of the executive;

- (iii) staffing matters are not executive decisions i.e appointments, redundancies and new posts and any associated costs and savings are accordingly not key decisions;
  - (iv) where a series of decisions is being taken on a major capital project ancillary decisions do not need to be considered key decisions unless the decision to progress the project cannot be made until an ancillary decision has been made and acted upon. This does not include applications for planning permission but does include, for example, expenditure related to applications for grant funding to support projects which would not otherwise progress.
- (c) Savings are deliberate cuts in a budget not underspends against a budget. Savings which will accumulate over time will not be aggregated to ascertain the level of saving. The saving in the first financial year alone is to be used.
  - (d) Income is not a saving and is to be disregarded for this purpose, but may involve making a key decision under 3.4 below.

### **3.4 OTHER THRESHOLDS FOR KEY DECISIONS**

In addition to the financial thresholds determined to be significant by the Council, paragraph 8(b) of the Executive Arrangements Regulations 2012 referred to above requires that a key decision will arise where it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the authority.

### **3.5 REPORTS OF STATUTORY OFFICERS**

- (a) Where the Monitoring Officer or Chief Finance Officer intervene in an executive action under their statutory powers then all action to which the report relates must be suspended until the report has been considered by the Cabinet.
- (b) If the Overview and Scrutiny Commission decides, having seen the report of the Monitoring Officer or Chief Finance Officer that they wish to hold a short inquiry prior to the consideration of the report by the Cabinet, the Cabinet shall delay consideration of the report until they receive the memorandum of report of the Overview and Scrutiny Commission which shall be no more than 28 days from the date of issue of the report by the Monitoring Officer or Chief Finance Officer.
- (c) After considering the report of the Monitoring Officer or Chief Finance Officer the Cabinet must report in writing to the Council and the Monitoring Officer or Chief Finance Officer explaining what action, if any, is to be taken in consequence of the report and the reasons for that action or for no action.