



Title:	Constitution of the Council (Part 3: Responsibility for functions)
Owner:	John Teasdale
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CONSTITUTION OF THE COUNCIL

PART 3 - RESPONSIBILITY FOR FUNCTIONS, PROCEDURES AND DELEGATION OF POWERS

1 THE FULL COUNCIL

- 1.1 The Functions and Procedures of the Full Council are set out in Parts 3A and 3B.

2 EXECUTIVE FUNCTIONS

- 2.1 The Cabinet is the Council's "Executive" under the Local Government Act 2000 – as defined in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.
- 2.2 In this Constitution the term "Executive Functions" includes those "Local Choice" Functions shown in Section 3 below which are to be dealt with as Executive Functions.
- 2.3 Executive Functions will be carried out by the Cabinet, the Leader of the Council, Cabinet Members or Officers of the Council as set out in Parts 3C and 3Z.

3 LOCAL CHOICE FUNCTIONS

- 3.1 Regulations under Sections 9D and 105 of the Local Government Act 2000 specify functions which may be (but need not be) the responsibility of the Cabinet.
- 3.2 Those functions will be discharged as follows:

	Function	Responsibility of:
3.2.1	Any function under a local act.	The Executive
3.2.2	Appeals by employees of the Council against dismissal decisions resulting from disciplinary action, including in respect of Chief Officers other than Statutory Officers.	The Appeals Panel
3.2.3	Final appeals regarding formal complaints (other than in respect of a Councillor's conduct).	Complaints Panel
3.2.4	Other appeals.	The Executive
3.2.5	Any function relating to contaminated land.	The Executive
3.2.6	Any function relating to the control of pollution or the management of air quality.	The Executive
3.2.7	The service of an abatement notice in respect of a statutory nuisance.	The Executive
3.2.8	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply to the Council's area.	The Executive
3.2.9	The inspection of the Council's area to detect any statutory nuisance.	The Executive
3.2.10	The investigation of any complaint as to the existence of a statutory nuisance.	The Executive
3.2.11	The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land.	The Executive
3.2.12	The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976	The Executive
3.2.13	The appointment (and any subsequent revocation of such appointment) of any individual to any office other than an office in which they are employed by the Council.	The Leader of the Council

3.2.14	The appointment (and any subsequent revocation of such appointment) of any individual to any body, other than: <ul style="list-style-type: none"> • the Council; • a joint committee of two or more authorities; or • any committee or sub-committee of the Council or a joint committee. 	The Leader of the Council
3.2.15	The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.	The Executive

4 OTHER FUNCTIONS WHICH ARE NOT EXECUTIVE FUNCTIONS

4.1 Other functions which are not Full Council functions and not Executive Functions (including those “Local Choice” Functions shown in Section 3 above which are not to be dealt with as Executive Functions) will be carried out by Committees, Sub-Committees and Officers as set out in Parts 3D to 3K (inclusive) and Part 3Z.

5 URGENT DECISIONS OUTSIDE OF THE BUDGET OR POLICY FRAMEWORK

5.1 Where an urgent decision is required to safeguard the interests of the Council or ~~is~~ otherwise in the public interest (threat to life or well-being) and the decision is not within the approved ~~B~~udget or Policy Framework, the decision may be taken by:

5.1.1 The Leader of the Council;

~~5.1.1~~ *in consultation with the Chief Executive, the Monitoring Officer and Section 151 Officer or, in ~~the~~ absence of the Chief Executive, another Chief Officer who may not be the Monitoring Officer or Section 151 Officer;*

5.1.2 In the absence of the Leader of the Council, any Cabinet Member;

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- Commented [JT1]: Law does not specify who in this scenario, but mandates that that the Constitution sets this out. There is flexibility.
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~~5.1.2 *in consultation with the Chief Executive, the Monitoring Officer and Section 151 Officer or, in the absence of the Chief Executive, another Chief Officer who may not be the Monitoring Officer or Section 151 Officer; in consultation with the Chief Executive or, in his absence, a Chief Officer;*~~

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~~Provided that:~~**provided that:**

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- ~~• The Chairman of the relevant Overview and Scrutiny Committee; or ¹~~
- ~~• If the Chairman of the relevant Overview and Scrutiny Committee is unable to act, The Mayor; or ¹~~
- ~~• If the Chairman of the relevant Overview and Scrutiny Committee or Mayor are unable to act, the Deputy Mayor¹ —~~

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~~agree~~ that the making of the decision is urgent, cannot be deferred and that it is not practical to convene a meeting of the Full Council.

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5.2 Full reasons for the decision, details of the persons making the decision, ~~and~~ those consulted and the reasons for urgency must be recorded. ²

~~5.3~~ A report must be made to the next available Council meeting with details of the decision and the reasons for urgency.

~~5.4~~ The operation of the provisions relating to urgency shall be monitored and will be reported to Full Council as part of the Monitoring Officer's annual report.

~~5.3~~ The operation of the provisions relating to call-in and urgency shall be monitored and, if necessary, a report shall be submitted to Full Council with proposals for review.

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~~5.5~~ A decision made using these provisions shall not be subject to the call-in procedure.

~~5.4~~ —

¹ Part 3, The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, SI 2012/2089

² If the decision is also a key decision, the requirements at paragraph 7.13 of Part 4A must also be complied with.

6 OTHER PROVISIONS RELATING TO DECISIONS

ACCESS TO INFORMATION

6.1 The requirements providing access to information, meetings, etc. are set out in Part 4A of the Constitution.

CALL-IN OF KEY DECISIONS

6.2 The “Call-in” procedure must only be used where Councillors have evidence which suggests that the Cabinet or Cabinet Member did not take the decision in accordance with the principles set out in Article 11.2 (Part 2) of this Constitution (Principles of decision making). The relevant principles within Article 11.2 must also be referred to when requesting the Call-in of a decision and all Councillors relevant to the Call-in must agree with the principles cited as the reasoning for doing so.

~~6.26.3~~ The procedure is only intended for use when councillors believe that the principles of decision making as set out in Article 11.2 of the Constitution have not been followed. It is not intended for use when councillors simply disagree with the decision taken and wish to appeal it.

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~~6.36.4~~ Councillors ~~must~~ shall have regard to principles set out in Article 11.2 the criteria set out below when ~~considering~~ considering their reasons ~~-whether~~ to call in a decision.

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~~6.46.5~~ Only Key Decisions (as defined in Part 4A) may be called in under this procedure.

~~6.56.6~~ The procedure is as follows:

~~6.5.16.6.1~~ As soon as possible (normally within two working days) after a Key Decision has been made, details of the decision will be published electronically; made available at the Council’s offices; and sent to all Councillors.

~~6.5.26.6.2~~ The relevant notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of 3 working days after the publication of the notice unless a valid request to call in the decision is made within that time.

~~6.5.36.6.3~~ During that period, the Proper Officer shall call in the decision for scrutiny by the relevant Scrutiny Committee if they receive a valid request to do so.

~~6.5.46.6.4~~ A valid request to call in a decision shall:

~~6.5.4.16.6.4.1~~ be in writing or by email;

~~6.5.4.26.6.4.2~~ state the decision which the Councillors wish to call in;

~~6.5.4.36.6.4.3~~ state the reason(s) why they wish to call in the decision (having regard ~~amongst other things~~ to the ~~principles~~~~criteria~~ set out in Article 11.2);

~~6.5.4.46.6.4.4~~ be signed by any ten Councillors ~~or more~~.

~~6.5.56.6.5~~ The validity of a request for call-in shall be determined by the Proper Officer in consultation the Chairman of the relevant Scrutiny Committee.

~~6.5.66.6.6~~ Upon a valid request for call-in, the Proper Officer shall notify the decision taker of the call-in and tell the decision taker not to implement the decision.

~~6.5.76.6.7~~ The Proper Officer shall then call a meeting of the relevant Scrutiny Committee to consider the decision as soon as practicable and in any event within 15 working days of the request for call-in being received.

~~6.5.86.6.8~~ If the relevant Scrutiny Committee does not meet within the ~~15~~ working day period, the decision will come into force, and may then be implemented, on the next working day following expiry of that period.

~~6.5.96.6.9~~ At any meeting to consider a call-in, the decision taker may attend and speak, but not vote, on the call-in.

~~6.5.106.6.10~~ At a meeting called following a request under paragraph 6.5 the Councillors making the request who are not members of the relevant Scrutiny Committee may attend and speak, but not vote, on the call-in.

~~6.5.116.6.11~~ The relevant Scrutiny Committee will consider the decision and has three options:

~~6.5.11.16.6.11.1~~ To do nothing and allow the decision to stand;

~~6.5.11.26.6.11.2~~ To refer the decision back to the decision taker with a request to reconsider, including the reasons in writing for so doing;

~~6.5.11.36.6.11.3~~ To refer the matter directly to the Full Council for debate (this will only usually be in exceptional circumstances such as when the decision is contrary to the Policy Framework or the Council's budget).

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~~6.5.12~~6.6.12 If the relevant Scrutiny Committee decides option ~~6.6.11.16~~6.5.11.16 above, the decision will come into force, and may then be implemented, on the next working day. The Proper Officer shall notify the decision taker, including any concerns of the relevant Scrutiny Committee which it has asked to be passed on.

~~6.5.13~~6.6.13 If the relevant Scrutiny Committee decides option ~~6.6.11.26~~6.5.11.26 above, the decision taker must reconsider the decision within 10 working days and confirm or amend it as a final decision, giving reasons. The matter may not then be called-in a second time.

~~6.5.14~~6.6.14 If the relevant Scrutiny Committee decides option ~~6.6.11.36~~6.5.11.36 above, the Proper Officer shall call a meeting of the Full Council to consider the decision within ~~1520~~ working days of the relevant Scrutiny Committee's decision.

~~6.5.15~~6.6.15 If the Council does not meet within the 15 working day period, the decision will come into force, and may then be implemented, on the next working day following expiry of that period.

~~6.5.16~~6.6.16 The Full Council will consider the decision and has three options:

~~6.5.16.16~~6.6.16.1 To do nothing and allow the decision to stand;

~~6.5.16.26~~6.6.16.2 To refer the decision back to the decision taker with a request to reconsider, including the reasons in writing for so doing;

~~6.5.16.36~~6.6.16.3 To notify the decision taker, if such be the case, that it considers that the decision is outside the Council's Policy Framework and/or budget and that accordingly the decision is outside the powers of the decision taker (NOTE – The Council does not have the power to alter executive decisions).

~~6.5.17~~6.6.17 If the Full Council decide option ~~6.6.16.16~~6.5.16.1 above, the decision will come into force, and may then be implemented, on the next working day. The Proper Officer shall notify the decision taker, including any concerns of the Council which it has asked to be passed on.

~~6.5.18~~6.6.18 If the Full Council decide option ~~6.6.16.26~~6.5.16.2 above, the decision taker must reconsider the decision within 10 working days and confirm or

amend it as a final decision, giving reasons. The matter may not then be called-in a second time.

~~6.5.19~~6.19 If the Full Council decide option ~~6.6.16.3~~~~6.5.16.3~~ above, the Proper Officer shall notify the decision taker who may not then take the decision.

CRITERIA:

~~6.6~~ These are the criteria referred to above to be taken into account when considering a call-in:

~~6.6.1~~ The decision appears to be contrary to the Council's Policy Framework and/or budget.

~~6.6.2~~ The decision appears to be inconsistent with any other existing policy approved by Full Council.

~~6.6.3~~ The decision is disproportionate to the desired outcome.

~~6.6.4~~ The decision taker appears to have failed to consult relevant stakeholders.

~~6.6.5~~ The decision taker appears to have failed to take appropriate professional advice from officers or has failed to take such advice into account.

~~6.6.6~~ The decision taker appears to have failed to have regard to some other relevant consideration.

~~6.6.7~~ There is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to the decision maker to allow the relevant Scrutiny Committee to hold the decision taker to account.

~~6.6.8~~ The decision appears to give rise to significant legal, financial or propriety issues.

~~6.6.9~~ The notification of the decision does not appear to have been in accordance with Council procedures.

~~6.6.10~~ The decision appears otherwise not to have been taken in accordance with the principles set out in Article 11.2 of this Constitution (Principles of decision making).

Commented [JT2]: Most local authorities simply refer to their 'principles of decisions making.'

URGENT DECISIONS:-

~~6.7 Where an executive decision which would normally be subject to call in is urgent, the call in provisions will not apply. A decision will be urgent only where the Council's interests or the public interest would be significantly prejudiced by the delay likely to be caused by the call in procedure. Such decisions must be agreed to be "urgent" by the Mayor, or, in their absence, the Deputy Mayor, or, in their absence, the Chair of the relevant Scrutiny Committee. In such cases, the record of the decision and the notice by which it is made public shall state that the decision is urgent and not subject to call in.~~

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Commented [JT3]: Duplicates Key Decision provisions.

~~6.8 The operation of the provisions relating to call in and urgency shall be monitored and, if necessary, a report shall be submitted to Full Council with proposals for review.~~

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