

# Taunton Deane Borough Council

## Corporate Governance Committee – 27<sup>th</sup> September 2010

### Update of various parts of the Constitution

#### Report of the Legal & Democratic Services Manager and Councillor Bryan Denington (Chair of the Constitutional Sub Committee)

(This matter is the responsibility of the Leader of the Council)

#### 1. Executive summary

To approve the changes to part 3 of the Constitution in light of the changes following the Core Council Review and to approve the minor changes to articles 6 and 15 and the Budget and Policy Framework Procedure rules.
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#### 2. Background

- 2.1 The Council recently undertook a Core Council Review to re-structure the Authority in order to ensure that it is fit for purpose and able to carry out its functions for the future.
- 2.2 As a result of the changes part 3 of the constitution requires updating to ensure that it reflects the new structure and that the delegations now sit with the correct member or officer.
- 2.3 The proposed changes are set out in Appendix 1 of this report.
- 2.4 A recent Court of Appeal case has illustrated the importance of ensuring that councils constitutions comply with the voting procedures set down in section 39 of Schedule 12 of the Local Government Act 1972. This case stated that councils should not be setting down different voting principals in their constitutions to deal with different situations, i.e. stating that the vote needs a two thirds majority or giving a number of votes required.
- 2.5 Articles 6 and 15, attached at Appendix 2, have been amended to ensure that when decisions are voted upon they comply with section 39 of Schedule 12 in that any decision made is based on a majority of those present and voting.
- 2.6 Attached at Appendix 3 is an update to the Budget and Policy Framework Procedure Rules to ensure that any alternative budget proposals that may be put forward are properly costed by the section 151 officer.

#### 3. Finance comments

- 3.1 There are no financial implications in this report.

#### **4. Legal comments**

- 4.1 The Council is required to keep an up to date constitution in order to ensure that its decision making processes and procedures are lawful.

#### **5. Links to corporate aims**

- 5.1 There are no specific links to the corporate aims.

#### **6. Environmental and community safety implications**

- 6.1 There are no implications for the environment or community safety.

#### **7. Equalities impact**

- 7.1 An impact assessment is not required in respect of this report.

#### **8. Risk management**

- 8.1 If the constitution is not kept up to date it can affect the lawfulness of decision making which is a serious risk to the Authority.

#### **9. Recommendations**

- 9.1 Members are recommended to approve the changes detailed in Appendix 1 to this report.
- 9.2 Members are recommended to approve the changes detailed in Appendix 2 to this report
- 9.3 Members are recommended to approve the changes detailed in Appendix 3 to this report.

#### **Contact**

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# **APPENDIX 1**

**PART THREE -**

**RESPONSIBILITY  
FOR  
FUNCTIONS**

## Part 3 Responsibility for Functions

### 1.0 Scheme of Delegations

- 1.1 Legally a local authority depends upon a series of statutes which in some cases give it a power (that is, a discretion,) to do something - or - in others - a duty to carry out that function or service. Each power or duty is often made subject to various limits as to just how it is to be exercised.
- 1.2 Because of this statutory foundation for the work of local councils, it is important that we are always specific as to which statute we are using to achieve our purposes. Unless we make that clear, then it is difficult if not impossible for the community to hold us to account.
- 1.3 Apart from this “what and how”, we also need to say - for transparency and accountability purposes - “who” it is within the Council - that has the power to do something. This means that we must produce a “Delegation Scheme” describing these formal responsibilities.

### 2.0 Who?

- 2.1 To help understand what follows, there are a number of levels of decision-making under our Constitution. Each of these is reflected by the tables which follow later in this section.
- 2.2 First is Full Council itself. Full Council retains a range of higher level decisions - many relating to our overall strategies - or to the setting of our annual budget and of Council Tax. Some of these functions can legally only be undertaken at this highest level. With others, it has been this Council’s own choice to do so.
- 2.3 Next is the Executive. The law requires that the great majority of the Council’s decision-making must only be carried out by or through the Executive - either meeting together – or, in some cases, on an individual basis. The Act prevents other councillors making such decisions.
- 2.4 Individual Executive Councillors also have decision-making powers delegated to them.
- 2.5 Next comes a group of “regulatory” functions. Broadly, these are roles where the Council has the task of controlling the activities of individuals - often on an application-by-application basis. To deal with these detailed controls, parliament decided that special committees should be retained - outside the Executive. In our case this means we have, for instance, a Planning Committee and a Licensing Committee made up of elected members and which meet in public so as to hear the various opinions expressed about individual cases before them.

2.6 The Corporate Governance Committee has certain limited decision-making powers delegated to it by the Council. These powers are described later in Section 4 Appendix 1 Part J

2.7 Finally are the officers. The great bulk of day-to-day operational decision-making is delegated by the Council, or the Executive, or the Planning and Licensing Committees to our professional staff. They need these powers so as to enable them to provide the services of the Council in the most economic, efficient and effective way.

### 3.0 What?

3.1 Attached are a number of tables setting out the broad areas of our statutory powers and the activities and functions we are involved in.

3.2 Section 1 is a list of those matters which remain either with the Full Council itself for decision or which are within its control - because the law either requires or permits it. The section also shows to whom these powers have been delegated (if at all) - whether to a committee or to an officer.

3.3 Section 2 sets out those powers and duties which the law excludes from Executive decision-making - such as planning, licensing and staffing issues. These are listed as delegated to a committee or to an officer with any limits on those delegations also included.

3.4 Section 3 lists those powers and duties which are ones which only the Executive can deal with - itself - or through the officers or area or joint committees. This covers the great majority of our powers and duties - with most operational decision-making continuing to be delegated to the Officers.

3.5 This part also lists these functions across a series of Portfolios. These reflect the current responsibilities of each of the current members of the Executive for the setting of the overall direction for these services. The extent of these Portfolios can be varied at the discretion of the Leader. The electronic version of this Constitution will describe the current positions.

3.6 Section 4 describes the delegation arrangements to the Officers and the individual Executive Councillors. As with our current Delegation Scheme, most of the operational decision-making under these powers and duties is delegated on to the officers.

3.7 Section 4 Appendix I Part A sets out the current decisions delegated by the Planning Committee to the Growth and Development Manager or in his absence the Development Management Lead or the Building Control Manager

3.8 Section 4 Appendix I Part B describes the similar delegations made by the Licensing Committee to the Community Services Manager or in his absence the Licensing Manager.

3.9 Section 4 Appendix I Parts C&D set out similar delegations made by the Committee to the Community Services Manager and in his absence the Environmental Health Lead .

3.10 Section 4 Appendix I Part E sets out similar delegations made by the Council

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3.11 Section 4 Appendix I Parts F G H and I describe powers that are only exercisable by Full Council.

3.12 Section 4 Appendix I Part J sets out the powers and duties of the Corporate Governance Committee.

3.13 Section 4 Appendix I Part K sets out the Proper Officers in respect of various Public Health Acts and Regulations.

## Section 1 The Powers of Full Council

- 4.0 The functions statutorily reserved to the Council are set out below in Column 1. Column 2 shows who else is involved - either as having full statutory powers delegated to them or as being the source of a recommendation to full Council.
- 4.1 Where a power is shown as delegated to an officer then that officer shall also have the power to re-delegate that power to another officer of the authority or to refer or remit it to another regulatory body of the Council for it to decide.
- 4.2 Where a regulatory power is shown as delegated to an officer, that power shall include the authority to enforce those regulatory powers using all the formal powers available to the Council under the relevant legislation.
- 4.3 Where a reference to a statutory power is made, then that reference shall include any secondary legislation and to any subsequent consolidating, amending or substituting legislation.

	Function	If delegated - then to whom?
1	To set the " <i>Policy Framework</i> " and the " <i>Budget</i> " within which the Executive must operate. [Both these terms are defined below.]	Council - on the recommendation of the Executive or of the Scrutiny Committees.
2	In a limited range of cases - to make decisions about the discharge of an "executive function". This applies <u>only</u> to those cases where the decision-maker is considering an issue - which is not only:- (a) covered by the Policy Framework or the Budget, but also - (b) where the decision-maker is inclined to make it in a manner which:- <ul style="list-style-type: none"> <li>• would be contrary to that Framework, or</li> <li>• would be contrary to/or not wholly in accordance with the Budget.</li> </ul>	Council - on the recommendation of the Executive, an Executive Councillor or of the Scrutiny Committees.
3	To exercise - through delegated powers - those "regulatory functions" (these are listed in detail at Appendix 1) which must not be within the remit of the Executive:- (a) Development Control; Building Control. <b>Appendix 1 – Part A</b>	Planning Committee; Growth & Development Manager, Development Management Lead, <u>Building Control Manager</u> , Solicitor to the Council.

	Function	If delegated - then to whom?
	(b) Licensing and Registration <b>Appendix 1 - Part B</b>  (c) Food Safety <b>Appendix 1 - Part C</b>  (d) Health and Safety at Work (this relates only to those functions which the Council exercises <u>other than</u> as employer) <b>Appendix 1 - Part D</b>  (e) Electoral services <b>Appendix 1 - Part E</b>  (f) Corporate Governance <b>Appendix 1 - Part J</b>	The Licensing Committee; Community Services Manager, the Licensing Manager and the Environmental Health Lead Officer  Community Services Manager or Environmental Health Lead  Community Services Manager.  Electoral Registration Officer and Returning Officer.  Monitoring Officer and S151 Officer
	(g) Staffing matters (other than those dealt with in Part 4H of the Constitution - the Standing Orders as to Employment of Officers).  (h) Ceremonial and Miscellaneous matters <b>Appendix 1 - Part G</b>	Head of Paid Service; the Strategic Directors; Head of HR, the relevant Unit Managers and the Staffing Panel.  Council <u>on the recommendation of the Corporate Governance Committee</u>
4	To agree and/or to make significant changes to the terms of reference of the Planning Committee, the Overview and Scrutiny Committees	Council - on the recommendation of the Overview & Scrutiny Committees or the Planning Committee.
5	To decide on the number of seats to be allocated to each Party Group (or to independent councillors) in accordance with the "proportionality" rules in the Local Government and Housing Act 1989.	Council - on the recommendation of the Monitoring Officer.
6	To agree the arrangements for the appointment of the Head of Paid Service and to note the Appointment Panel's decision	Council - on the recommendation of the relevant Appointments Panel set up for that purpose.
7	To agree the arrangements for the appointment of the Monitoring Officer and the Section 151 Officer and to note the Appointment Panels' decisions.	Council - on the recommendation of the Head of Paid Service.
8	To confirm the dismissal of the Head of Paid Service, the Monitoring Officer or the Section 151 Officer.	Council - at the recommendation of the relevant Disciplinary Panel set up for that purpose and the recommendation of an appointed Independent Person (as referred to in paragraph 6 of the Officer Employment Procedure (Rule 8 - Part 4-H4).
9	To appoint the Leader of the Executive.	Council - on the recommendation of the controlling political group or groups of the Council.

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	<b>Function</b>	<b>If delegated - then to whom?</b>
10	To decide on the number of Executive Portfolios which the Leader may allocate.	Council - on the recommendation of the Leader.
11	To remove the Leader or other members of the Executive.	Council - in accordance with the procedure in Article 7.
12	To adopt the Constitution and to agree any major changes to it.	Council - on the recommendation of the Corporate Governance Committee
13	To approve any application to the Secretary of State in respect of a Housing Land Transfer.	Council - on the recommendation of the Executive.
14	To appoint and dismiss representatives to those outside bodies whose role is <u>not</u> closely linked to an Executive function.	The Legal and Democratic Services Manager - acting on the advice of the relevant Scrutiny Committee.
15	To adopt/modify a Members' Allowances Scheme.	Council - on the recommendation of a Panel of external members.
16	To change the name of the area, to confer the title of Honorary Alderman or the Freedom of the Borough.	Council - on the recommendation of the Leader of the Council
17	To make, amend, revoke, re-enact or adopt bylaws and to promote or oppose the making of local legislation.	Council - on the recommendation of one of the Overview & Scrutiny Committees whose role covers the services affected.
18	To adopt any plan or strategy (whether statutory or non-statutory) which the Council has decided should be undertaken by itself rather than by the Executive.	Council - on the recommendation one of the Scrutiny Committees using the "call-in" mechanism in Part 4E of the Constitution.
19	To deal with any other matters which, by law, must be reserved to Council.	Council <u>on the recommendation of the Monitoring Officer</u>

## 4.2 The Council's Policy Framework

This is defined in Article 4 of the Constitution. It consists of a series of important plans and strategies which form the basis for many of its services. Each is a substantial document in itself which is regularly reviewed and updated. They are not therefore included in this Constitution but current copies are always available at the Deane House.

## 4.3 The Budget

Includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax Base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its Capital Expenditure.

4.4 Whilst decisions on the framing of the Budget itself are ones for the full Council, many of the operational issues relating to monitoring and to virement are delegated to either the Executive, to Executive Councillors or to the Officers - subject always to the approval of the Section 151 Officer.

## Section 2 Regulatory Powers of the Council

5.0 In order to carry out the Council's "regulatory powers" the following committees be constituted:-

- Planning Committee  Deleted: - 17 members.
- Licensing Committee - from whom individual Licensing Panels are appointed to deal with individual applications  Deleted: - 15 members
- Staffing Panel - pool of members from whom individual Panels/Sub Committees are drawn as and when necessary in relation to appointment and disciplinary matters
- Corporate Governance Committee  Deleted: - 11 members

5.1 The powers and duties of these committees are set out in Appendix 1.

## Section 3 Executive Powers

6.0 The majority of the decision-making of the Council relates to areas which are defined as “Executive matters” within the law and can therefore only be dealt with via the Executive. This means that:-

- (a) those members who are not “Executive Councillors” cannot make those decisions; [the exception to this general rule is in (f) below];
- (b) Full Council itself cannot make Executive decisions either;
- (c) nor can the Overview & Scrutiny Committees;
- (d) the Executive meeting as a body can do so;
- (e) so too can individual Executive Councillors - unless the Council has identified a particular power as one which should only be taken by the Executive acting together;
- (f) area committees can be given delegated powers to take both “Executive” and “non-Executive” decisions - if the Council wants them to;
- (g) the great majority of operation decision-making within policy and the budget is the responsibility of the officers - through this Delegation Scheme - subject to the limitations included here;
- (h) the need for both transparency and accountability require that decision-making of this type under the Act must be carefully controlled and recorded and that all councillors together with the press and public have full access to those decisions - not only at the time - but also before and after - they are made;
- (i) certain types of decisions - “key decisions” have even greater levels of safeguards placed upon them and require (for instance) consultation with the Council’s Review side before being progressed.

6.1 This Delegation Scheme has therefore been based on the following features:-

- (a) most day to day operational decision-making powers are delegated to the Council’s officers;
- (b) the role of the Executive - meeting as a body - has been designed to avoid such operational decisions coming to it unless they are key decisions or are otherwise of real significance across the Council’s services;
- (c) the Executive’s major role will be in defining and reviewing the Council’s strategies and significant policies and in advising the Council on these matters and as to the Budget;

- (d) where decisions can be made at a lower level, then the Executive will ensure that this Scheme is designed, implemented and modified so as to achieve that purpose;
- (e) before accepting an item for the Executive's agenda, the relevant Executive Councillor, together with the Legal and Democratic Services Manager, will satisfy themselves that the issue could not be otherwise properly dealt with under delegated powers;
- (f) where a matter arises - which involves a range of detailed issues - but is of such significance that it must nevertheless be taken to the Executive - then the Executive Councillor responsible for that service must assess whether the matter is of such urgency that it would not be practicable for the advice to be first obtained from:-
  - (i) the Overview & Scrutiny Committees; or
  - (ii) an officer; or
  - (iii) a committee of the Executive itself.
- (g) so as to make sure that its strategic role is clearly identified and maintained, reports to the Executive will be written in such a form that ensures that:-
  - (i) unnecessary detail is excluded,
  - (ii) policy factors are clearly identified and analysed,
  - (iii) impact upon our Corporate Priorities is identified,
  - (iv) all necessary consultation as to its content has taken place, and
  - (v) the issues for decision by the Executive are justified as ones which could not reasonably be taken elsewhere.

## Section 4 Delegations to Executive Councillors and Officers

### 7.1 Principle 1

The overriding principle upon which the Council's Delegation Scheme is founded is:-

All the Council's statutory powers and duties in relation to the functions and activities (listed in the following table) are delegated to the Executive and from there (as shown) to the Corporate Management Team. Those listed include all such incidental and ancillary powers as are needed in order to carry out those functions together with all statutory powers delegated to the Executive by another Local Authority by virtue of an agreement under the Local Government Acts.

**7.2** The consequent powers to make all operational decisions as to the Council's services are delegated to the Head of Paid Service, to the S.151 Officer and the Monitoring Officer (these are referred to as the "statutory officers"), together with the Strategic Directors and the Theme Managers ( the "Corporate Management Team"), so long as the decision:-

- (a) falls within the Council's Policy Framework; and
- (b) is otherwise within our approved policies; and
- (c) complies with the law, Financial Regulations, Standing Orders, Contract Standing Orders and the other controls within this Constitution; and
- (d) is wholly in accordance with the budget for the current and following year, and
- (e) has not been disapproved by any of the "statutory officers"; and
- (f) has not been the subject of a request from the responsible Executive Councillor for the decision to be remitted to the Executive.

### 7.3 Principle 2

Even where a statutory power has been delegated, the delegatee still retains a discretion as to how the decision is to be taken. Either:-

- (a) to deal with it him/herself;
- (b) to "remit" the decision - "upwards" (that is - in order to seek endorsement of a proposed decision) - in the case of "executive matters" to the Executive, or in the case of a non-executive matter to the Council or to the Planning Committee or to an Overview & Scrutiny Committee ;
- (c) to further delegate that power;
- (d) to consult others before exercising the power;

(e) to take the decision jointly with other Executive Councillors or officers.

#### **7.4 Principle 3**

It is expected that, within these delegations, the officers will keep Executive Councillors fully briefed as to the services for which they are responsible and that they will consult with the relevant Executive Councillor on issues where either believe that this is needed. Built upon this foundation, It is anticipated that this will mean that a number of otherwise delegated decisions will, in practice, be taken either by - or in consultation with - the Executive Councillor where s/he believes the matter to be one of particular sensitivity or corporate significance.

#### **7.5 Principle 4**

So as to avoid any misunderstandings as to the exercise of these powers, each member of the Corporate Management Team will agree with the appropriate Executive Councillor a general approach towards the working arrangements they intend to adopt between them as to:-

- (a) service briefing;
- (b) decision-making;
- (c) consultation with the Executive Councillor;
- (d) the scope for joint decisions;
- (e) the way those decisions will be formally recorded.

#### **7.6 Principle 5**

Any further general delegation of specific statutory powers by Corporate Management Team to an officer under Principle 2 shall be made in writing and shall record its extent and any limitations on the exercise of those powers.

A copy of any such delegation shall be provided to the Monitoring Officer who - as "proper officer" - when so required has the duty to formally certify the existence and validity of those statutory powers - in any legal proceedings - or to sign formal agreements on the Council's behalf giving effect to those decisions.

**7.7** Within these principles the following table lists the range of functions for which all the Council's statutory powers and duties are delegated to the Executive and thence to the Corporate Management Team. The

table shows the current services portfolios, each of which is held by an Executive Councillor as responsible for the overall policy direction for that service. The table also shows the “lead officer” who is primarily responsible for the delivery of that service. Any limits upon the delegations to the officers (other than those listed above) are shown here.

(Note: both the extent of the portfolio held by an Executive Councillor and the identity of the “lead officer” are subject to change at the discretion of the Leader and the Chief Executive respectively. The electronic version of this Constitution will show the position as is then current).

<b>FUNCTION</b>	<b>LEAD OFFICER</b>
<b><i>Leader of the Executive</i></b>	
Chairmanship of the Executive	CHIEF EXECUTIVE (CE)
Advice to Council on overall strategy and core policies	CE
Overall financial corporate management of the Council	Section 151 OFFICER (S151) and CE
Budget development and proposals to Council	S151 and CE
Budget monitoring	S151
Review of virement and spending limits	S151
Audit of the Council's financial affairs	CE
Allocation, reallocation and variation, of portfolios to Executive Councillors	CE
Liaison with the Chairs of the Overview & Scrutiny Committees as to programme of policy development and review	CE
The Executive's four months advance programme	CE
Allocating issues not falling within a portfolio to other Members of the Executive	CE
Duties in relation to urgent decisions and the call-in mechanism	CE/MONITORING OFFICER (MO)
Emergency planning	CE
Constitutional issues	CE/MO
<b><i>Communications and Community Leadership</i></b>	
Community leadership	Strategic Director (SD)
Area Working	SD
Parish liaison	SD
Support for community groups	SD

<b>FUNCTION</b>	<b>LEAD OFFICER</b>
Voluntary welfare grants	SD
Crime reduction	SD
Social inclusion	SD
Equal opportunities	SD
Youth	SD
Environmental awareness and strategy	SD
Sustainability	SD
Communications	SD
Public relations	SD
<b><i>Economic Development and the Arts</i></b>	
Economic development	SD
Rural affairs	SD
Tourism	SD
Livestock marketing facility	SD
Taunton Town Centre Company	SD
Wellington Economic Partnership	SD
Shopmobility	SD
Street trading controls	<del>SD</del>
Management of corporate property portfolio	SD
Arts development	SD
<b><i>Environmental Services</i></b>	
Waste collection and recycling	SD
Health promotion	SD
Land drainage and flood prevention	SD
Waterways	SD
Pest control	SD
Conveniences	SD
Dog wardens	SD
Street sweeping	SD
Environmental Health – policy	SD
Health and Safety - policy	SD
Food Control – policy	SD
Licensing – policy	SD
Cemeteries and Crematorium	SD

Deleted: Community Services Manager

<b>FUNCTION</b>	<b>LEAD OFFICER</b>
<b><i>Housing Services</i></b>	
Housing Strategy	SD
Rent rebates/allowances	SD
Homelessness	SD
Property Services	SD
Housing Management	SD
Elderly Services	SD
Lettings and Advice	SD
Housing Act advances	SD
Improvement grants	SD
Housing Standards	SD
Deane DLO	SD
<b><i>Corporate Resources</i></b>	
Deane House Central Support Services	SD
Mayoral support	SD
Civic functions	SD
Democratic Services	SD/MO
Land Charges	SD
E-Government	SD
Freedom of information	SD/MO
Electoral registration	SD/RETURNING OFFICER (RO)
Corporate personnel issues	SD
Information technology	SD
Council tax and benefits	SD
<b><i>Sports Parks and Leisure</i></b>	
Parks and playing fields	SD
Council's leisure facilities	SD
Allotments	SD
Leisure grants	SD
Sports development	SD
Leisure link with Tone Leisure	SD
<b><i>Planning and Transportation</i></b>	
Local/regional planning	SD
Countryside	SD

FUNCTION	LEAD OFFICER
Development Control – policy	SD
Building Control – policy	SD
Transport strategy	SD
Town centre strategy	SD
On and off-street parking - strategy (including DPE and residents' parking)	SD
Community transport	SD
Concessionary travel	SD
Car park operations	SD
CCTV operations	SD

## APPENDIX 1

### POWERS AND DUTIES OF REGULATORY COMMITTEES

#### Planning Committee

Whilst planning policy is an “Executive function”, the process for dealing with individual planning applications (and other development control activities) is “non-Executive”.

In Taunton Deane, these functions have been delegated to a Planning Committee and to the Council’s Development Control Manager.

The current extent of delegation of functions to the Committee and then to the officers is set out below. As these are subject to change, the up to date list of such delegations is to be found on the e-version of this Constitution on the Council’s website

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#### **Part A - Regulatory Powers of Planning/Growth and Development Manager**

#### **Exceptions to the Officer Delegations**

All proposals should be determined under delegated powers other than where one of the six criteria set out below are met.

Criterion 1: In the opinion of the Growth & Development Manager (or Chair of the Planning Committee) the application is considered to be a significant, controversial or sensitive nature.

Criterion 2: The application is from an elected member or member of staff (or partner thereof) and is recommended for approval.

Criterion 3: The application is accompanied by an Environment Statement (EIA).

Criterion 4: The application is a significant departure and is recommended for approval.

Criterion 5: Where there are conflicting views (giving clear planning reasons) from a Town/Parish Council, Parish Meeting or Ward Member as well as from four or more individuals.

Criterion 6: Applications will be delegated to the Growth & Development Manager to refuse if S106 agreements are not signed within 8, 13 or 16 week timescales.

Criterion 7: Discharge of the Council's duty under s91(2) of the Building Act 1984 (enforcement of Building Regulations) in its area shall be delegated to the Building Control Manager.

In addition, any application which is not referred to Committee, but where conflicting representations have been received, is referred to the Chair/Vice Chair of the Planning Committee before a decision is made.

### **Licensing Committee**

Unless otherwise indicated, the following powers are delegated to the Community Services Manager and in his absence the Licensing Manager.

<b>Part B – Regulatory Powers of Licensing and Registration Functions</b>	
1. Power to issue licences authorising the use of land as a caravan site ("site licences").	Section 3(3) of the Caravan Sites and Control of Development Act 1960
2. Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936
3. Power to license hackney carriages and private hire vehicles.	(a) as to hackney carriages, the Town Police Clauses Act 1847, as extended by section 171 of the Public Health Act 1875 , and section 15 of the Transport Act 1985 ; and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (b) as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
4. Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
5. Power to license operators of hackney carriages and private hire vehicles.	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
6. Power to license inter-track betting schemes.	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963, <u>as saved for certain purposes by article 3(3)(e) of the Gambling Act order</u>
7. Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968 <u>[as saved for certain purposes by article 4(2)(l) and (m) of the Gambling Act Order].</u>
8. Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976 <u>[as saved for certain purposes by article 5(2)(a) and (3) of the Gambling Act Order].</u>

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9.	Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976 <a href="#">[as saved for certain purposes by article 5(2)(d) and (5) of the Gambling Act Order]</a> .
10.	Power to license premises selling or supplying alcohol; providing regulated entertainment; selling hot food or drinks between 11pm and 5am.	Licensing Act 2003
11.	Power to issue Personal licences.	Licensing Act 2003.
12.	Power to license sex shops and sex cinemas <a href="#">and Sexual Entertainment Licences</a> .	The Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
13.	Power to license performances of hypnotism.	The Hypnotism Act 1952
14.	Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982.
15.	Power to license pleasure boats and pleasure vessels.	Section 94 of the Public Health Acts Amendment Act 1907
16.	Power to license market and street trading.	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982
17.	Power to license dealers in game and the killing and selling of game.	Sections 5, 6, 17, 18 and 21 to 23 of the Game Act 1831; sections 2 to 16 of the Game Licensing Act 1860, section 4 of the Customs and Inland Revenue Act 1883, sections 12(3) and 27 of the Local Government Act 1874, and section 213 of the Local Government Act 1972.
18.	Power to register premises for the preparation of food.	Section 19 of the Food Safety Act 1990.
19.	Power to license motor vehicle salvage operators	Motor Salvage Operators Regulations 2002
20.	Power to license premises for the breeding of dogs.	Section 1 of the Breeding of Dogs Act 1973 and section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999.

21.	Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	Section 1 of the Pet Animals Act 1951; section 1 of the Animal Boarding Establishments Act 1963; the Riding Establishments Acts 1964 and 1970 and 1970; section 1 of the Breeding of Dogs Act 1973 and sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999.
22.	Power to register animal trainers and exhibitors.	Section 1 of the Performing Animals (Regulation) Act 1925.
23.	Power to license zoos.	Section 1 of the Zoo Licensing Act 1981
24.	Power to license dangerous wild animals.	Section 1 of the Dangerous Wild Animals Act 1976
25.	Power to license knackers' yards.	Section 4 of the Slaughterhouses Act 1974. See also the Animal By-Products Order 1999
26.	Power to license persons to collect for charitable and other causes.	Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939
27.	Power to grant consent for the operation of a loudspeaker.	Schedule 2 to the Noise and Statutory Nuisance Act 1993

<b>Part C - Regulatory Powers of Community Services Manager</b>		
1.	Power to approve meat product premises.	Regulations 4 and 5 of the Meat Products (Hygiene) Regulations 1994
2.	Power to approve premises for the production of minced meat or meat preparations.	Regulation 4 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995
3.	Power to approve dairy establishments.	Regulations 6 and 7 of the Dairy Products (Hygiene) Regulations 1995
4.	Power to approve egg product establishments.	Regulation 5 of the Egg Products Regulations 1993
5.	Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.	Schedule 1A to the Food Safety (General Food Hygiene) Regulations 1995

6. Duty to keep register of food business premises.	Regulation 5 of the Food Premises (Registration) Regulations 1991.
7. Power to register food business premises.	Regulation 9 of the Food Premises (Registration) Regulations 1991.
8. Power to enforce offences relating to the display of no-smoking signs.,	Section 6(5) of the Health Act 2006
9. Power to enforce offences relating to smoking in smoke free places.	Section 7(4) of the Health Act 2006
10. Power to enforce offences of failing to prevent smoking in smoke-free places	Section 8(4) of the Health Act 2006
Power to transfer enforcement functions to another enforcement authority	Smoke-free (Premises and Enforcement) Regulations 2006 (S.I. 2006/3368)

#### **Part D - Functions relating to Health and Safety at Work**

Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the Authority's capacity as an employer.	Part I of the Health and Safety at Work etc. Act 1974
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#### **Part E - Regulatory Powers of Electoral Registration Officer/Returning Officer**

##### **Functions relating to Elections**

1. Duty to appoint an Electoral Registration Officer.	Section 8(2) of the Representation of the People Act 1983
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2.	Power to assign officers in relation to requisitions of the Registration Officer.	Section 52(4) of the Representation of the People Act 1983.
3.	Functions in relation to parishes and parish councils.	Part II of the Local Government and Rating Act 1997 and subordinate legislation under that Part.
4.	Power to dissolve small parish councils.	Section 10 of the Local Government Act 1972.
5.	Power to make orders for grouping parishes, dissolving groups and separating parishes from groups.	Section 11 of the Local Government Act 1972.
6.	Duty to appoint returning officer for local government elections.	Section 35 of the Representation of the People Act 1983.
7.	Duty to provide assistance at European Parliamentary elections.	Paragraph 4(3) and (4) of Schedule 1 to the European Parliamentary Elections Act 1978
8.	Duty to divide constituency into polling districts.	Section 18 of the Representation of the People Act 1983.
9.	Power to divide electoral divisions into polling districts at local government elections.	Section 31 of the Representation of the People Act 1983.
10.	Powers in respect of holding of elections.	Section 39(4) of the Representation of the People Act 1983.
11.	Power to pay expenses properly incurred by electoral registration officers.	Section 54 of the Representation of the People Act 1983.
12.	Power to fill vacancies in the event of insufficient nominations.	Section 21 of the Representation of the People Act 1985.
13.	Duty to declare vacancy in office in certain cases.	Section 86 of the Local Government Act 1972.
14.	Duty to give public notice of a casual vacancy.	Section 87 of the Local Government Act 1972.
15.	Power to make temporary appointments to parish councils.	Section 91 of the Local Government Act 1972.

16. Power to determine fees and conditions for supply of copies of, or extracts from, elections documents.	Rule 48(3) of the Local Elections (Principal Areas) Rules 1986 and rule 48(3) of the Local Elections (Parishes and Communities) Rules 1986
17. Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	Section 10 of the Representation of the People Act 2000

**Parts F G H I - Powers exercisable only by full Council:-**

<b>Part F - Functions relating to name and status of areas and individuals</b>	
1. Power to change the name of a district.	Section 74 of the Local Government Act 1972.
2. Power to change the name of a parish.	Section 75 of the Local Government Act 1972.
3. Power to confer title of Honorary Alderman or to admit to be an Honorary Freeman.	Section 249 of the Local Government Act 1972.
4. Power to petition for a charter to confer Borough status.	Section 245 of the Local Government Act 1972.

<b>Part G - Miscellaneous functions</b>	
1. Duty to approve authority's Statement of Accounts,	The Accounts and Audit Regulations 1996
2. Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972
3. Power to make standing orders as to contracts.	Section 135 of the Local Government Act 1972.
4. Power to take decisions about matters such as the creation of parishes and their electoral arrangements	Chapter 3 of Part 4 of the Local Government and Public Involvement in Health Act 2007
<b>Part H - Power to make, amend, revoke or re-enact byelaws</b>	
Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978	
<a href="#"><u>Part I - Power to promote local Bills.</u></a>	

Section 239 of the Local Government Act 1972.

**Part J – Powers and Duties of Corporate Governance Committee**

Review and challenge the action plans arising from the Audit Commission's annual management letter.

Oversee the Council's use of risk management

Monitor and review the Council's internal and external audit functions

Review and approve the Statement of Accounts

Monitor and review the Council's systems of internal control

**Part I – Proper Officers under the Public Health Acts**

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Dr K Kumaran, Consultant in Communicable Disease Control, Dorset and Somerset Health Protection Unit;

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Dr Mark Salter, Consultant in Communicable Disease Control, Dorset and Somerset Health Protection Unit;

Dr Sue Bennett, Consultant in Communicable Disease Control, and Director, Dorset and Somerset Health Protection Unit;

Dr Faiza Khan, Acting Consultant in Communicable Disease Control, Dorset and Somerset Health Protection Unit

<u>Legislation</u>	<u>Part, Section or Regulations</u>	<u>Effect</u>
<u>Public Health (Control of Disease) Act 1984</u>	<u>Parts II and III</u>	<u>Notifications and control powers for Communicable Diseases</u>
<u>Public Health (Infectious Diseases) Regulations 1988</u>	<u>Regulations 6,8,9,10 Schedules 3 and 4</u>	<u>Additional powers to the above</u>
<u>Public Health Act 1936</u>	<u>Sections 84 and 85</u>	<u>Cleansing of filthy or verminous articles, persons or clothing</u>
<u>Public Health Act 1961</u>	<u>Section 37</u>	<u>Disinfestation of verminous articles offered for sale</u>

Dr Caroline Gamlin, Joint Director of Public Health, NHS Somerset and Somerset County Council; and

Dr Ulrike Harrower, Consultant in Public Health, Somerset Primary Care Trust

<u>Legislation</u>	<u>Part, Section or Regulations</u>	<u>Effect</u>
<u>Public Health (Control of Disease) Act 1984</u>	<u>Parts II and III</u>	<u>Notification and control powers for Communicable</u>

		<u>Diseases</u>
<u>Public Health (Infectious Diseases) Regulations 1988</u>	<u>Regulations 6,8,9,10 Schedules 3 and 4</u>	<u>Additional powers to the above</u>
<u>National Assistance Act 1948 as amended by the National Assistance (Amendment) Act 1951</u>	<u>Section 47</u>	<u>Removal of persons to suitable accommodation in certain circumstances</u>
<u>Public Health Act 1936</u>	<u>Sections 84 and 85</u>	<u>Cleansing of filthy or verminous articles, persons or clothing</u>
<u>Public Health Act 1961</u>	<u>Section 37</u>	<u>Disinfestation of verminous articles offered for sale.</u>

All of the doctors named above for the purposes of section 35 of the Public Health (Control of Disease) Act 1984

## Appendix 2

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### Article 6 The Executive

#### 6.1 Role

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

#### 6.2 Form and composition

The Executive will consist of the Leader together with eight councillors ("Executive Councillors") appointed to the Executive by the Leader with the agreement of the controlling Party Group or Groups.

#### 6.3 Leader

The Leader will be a councillor elected to that position by the full Council. Subject to the exceptions in Article 6.4 below, the Leader will hold office for twelve months at a time with his or her appointment requiring renewal at each year's Annual Council Meeting.

#### 6.4 Term of Office – Exceptions

Events which will result in the Leader's term of office ending prematurely are:-

- (a) he or she resigns from the office; or
- (b) he or she is suspended from being a councillor (under Part III of the Local Government Act 2000); or
- (c) he or she is no longer a councillor; or
- (d) he or she is removed from office by special resolution of the Council (using the procedure set out in Article 6.8).

#### 6.5 Other Executive members

Other Executive members shall hold office until:-

- (a) the happening of any of the events set out in Article 6.4; or
- (b) they are removed from office by the Leader who must give written notice of any removal to the Chief Executive and to the Executive

Councillor. The removal will take effect two working days after receipt of the notice by the Chief Executive.

## **6.6 Proceedings of the Executive**

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.

## **6.7 Responsibility for functions**

### **(a) The Executive**

It shall be the function of the Executive meeting together to design and allocate Portfolios to each of their number.

### **(b) The Leader**

It will be the duty of the Leader to:-

- (1) Redefine, clarify and update the list of these Portfolios set out in Part 3 of this Constitution.
- (2) Similarly note the names of those Executive Councillors to whom those portfolios have been allocated by him/her.
- (3) Note those Executive functions which have been similarly allocated to the officers, to any Area Committees or to joint arrangements.

## **6.8 “Special Resolution”**

This is the process referred to in 6.4 and 6.5 above whereby - in exceptional circumstances - the Leader or a member of the Executive may be removed by full Council.

Fourteen days written notice of the intended moving of such a resolution at a Council meeting must be given to the Democratic Services Manager, the Chief Executive, the Leader and to any member of the Executive named in the notice. The notice shall require the signatures of at least one half of the Council.

It shall be placed on the agenda of the next ordinary Council meeting unless an extraordinary council meeting has been requisitioned. The proposal having been debated, shall be voted upon. It shall be approved by the full council with a majority of the members of the Authority present and voting at the meeting. If approved:-

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Deleted: require the votes of more than one half of the membership of the Council (that is, the votes of at least 29 councillors) to be approved.

- (a) a proposal shall be immediately laid before the same Council meeting as to the appointment of a new Leader; and
- (b) such a proposal shall require a simple majority, and if passed;
- (c) the change of Leadership shall take effect immediately on the passing of that resolution.

## Appendix 2

### Article 15      Review and Revision of the Constitution

#### 15.1    Duty to Monitor and Review the Constitution

The Monitoring Officer will monitor and review the operation of the Constitution and submit reports when necessary to the Constitutional Sub-Committee to ensure that the aims and principles of the Constitution are given full effect.

#### 15.2    Changes to the Constitution

##### (a)    Approval

Subject to paragraph (b) below, changes to the Constitution will be approved by the full Council with a majority of the members of the Authority present and voting at the meeting, after consideration of the proposal by the Constitutional sub- Committee

##### (b)    Minor Changes

Detailed changes of a limited significance (as agreed by the Monitoring Officer) to Parts 3-8 of this Constitution may be agreed by the Chairman of the Constitutional sub- Committee. Such minor changes will be notified to all councillors and updates of the full Constitution will be circulated to members annually.

4 **Disagreements as to the Budget**

- (a) The procedures set out in section 3 above shall also apply to disagreements which may arise between the Executive and full Council as to the Budget.
- (b) For the purposes of this section the Budget means the proposals which the Executive submits to full Council in February/March of each year as to various estimates, amounts, calculations and precepts relating to the Council's financial plans and requirements for the following financial year.
- (c) Where the Executive submits its Budget to full Council before 8<sup>th</sup> February in any financial year then the mechanism set out in section 3 (above which limits the full Council's powers to object to an Executive proposal) shall also apply to those Budget recommendations from the Executive. This should be done by substituting the word 'Budget' for 'plan' each time it occurs in section 3 and by making any other necessary consequential amendments.
- (d) Where (as is the norm) the Executive submits its Budget proposals to full Council on or after 8<sup>th</sup> February then those limits on full Council's powers shall not apply. In those circumstances full Council shall, at its Council Tax setting meeting, have the unrestricted right to approve, amend or to reject the proposals from the Executive - subject always to the statutory duty of the Council to set the level of Council Tax by 11<sup>th</sup> March in any year - as required by the Local Government Finance Act 1992.
- (e) A decision by full Council which complies with the above procedure shall require only a simple majority of votes cast at that meeting and shall take effect immediately.
- (f) In approving the Budget, the Council will also specify any changes it wishes to make to the currently approved extent of virement within the Budget which may be undertaken without reference to full Council.
- (g) The Section 151 Officer shall at each stage of the budgetary process, have the right to comment upon budget proposals and any substantive changes intended to be made to them before any such

decision has been put to the vote. All budget amendments shall be costed by the s151 Officer.