

# CONSTITUTION OF THE COUNCIL

## Contents

<b>Part 1 – Summary and Explanation</b>	[3-8]
<b>Part 2 – Articles of the Constitution</b>	
Article 1 - The Constitution	[9-11]
Article 2 - Members of the Council	[12-13]
Article 3 - Citizens and the Council	[14-22]
Article 4 - The Full Council	[23-24]
Article 5 - Chairing the Council	[25]
Article 6 - Improvement and Scrutiny Committees	[26-31]
Article 7 - The Executive	[32-33]
Article 8 - Regulatory and other committees	[34]
Article 9 - The Standards Committee	[35-36]
Article 10 - Audit Committee	[37]
Article 11 - Joint Arrangements	[38-40]
Article 12 - Officers	[41-45]
Article 13 - Decision Making	[46-47]
Article 14 - Finance, Contracts and Legal Matters	[48-49]
Article 15 - Review and Revision of the Constitution	[50]
Article 16 - Suspension, Interpretation and Publication of the Constitution	[51]
Schedule 1 - Description of Executive Arrangements	[52]
<b>Part 3 – Responsibility for Functions</b>	
Responsibility for Functions Scheme of Delegation	[53-90]
<b>Part 4 – Rules of Procedure</b>	
Council Procedure Rules	[91-102]
Access to Information Procedure Rules	[103-114]
Budget and Policy Framework Procedure Rules	[115-121]

Executive Procedure Rules	[122-126]
Improvement and Scrutiny Procedure Rules	[127-133]
Financial Procedure Rules	[134]
Standing Orders Relating to Contracts	[135-146]
Officer Employment Procedure Rules	[147-149]
 <b>Part 5 – Codes and Protocols</b>	
Members’ Code of Conduct	[150-162]
Officers’ Code of Conduct	[163-169]
Protocol on Member/Officer Relations	[170-171]
 <b>Part 6 – Members’ Allowances Scheme</b>	
Members’ Allowances Scheme	[172-188]
 <b>Part 7 – Management Structure</b>	
Management Structure	[189-190]

# **Part 1**

## **Summary and Explanation**

# Summary and Explanation

## The Council's Constitution

Derbyshire County Council has agreed this Constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Constitution is divided into 16 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols set out in Part 5 of this Constitution.

## What is in the Constitution?

Article 1 of the Constitution commits the Council to the efficient delivery of services in an open and accountable system of government. Articles 2-16 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2).
- Citizens and the Council (Article 3).
- The Full Council (Article 4).
- Chairing the Council (Article 5).
- Improvement and Scrutiny Committees (Article 6).
- The Executive (Article 7).
- Regulatory and other committees (Article 8).
- The Standards Committee (Article 9).
- The Audit Committee (Article 10).
- Joint arrangements (Article 11).
- Officers (Article 12).
- Decision making (Article 13).
- Finance, contracts and legal matters (Article 14).
- Review and revision of the Constitution (Article 15).
- Suspension, interpretation and publication of the Constitution (Article 16).

## **How the Council Operates**

The Council is composed of 64 Councillors who are elected every four years. Councillors are democratically accountable to residents of their electoral division. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a Code of Conduct to ensure high standards in the way they undertake their duties. The Standards Committee trains and advises them on the Code of Conduct.

All Councillors meet together as the Council. This will generally be open for the public to attend except where confidential matters are being discussed. Here Councillors decide the Council's overall policies and set the budget each year. The Council appoints the Leader of the Council and the Leader appoints the Executive. It holds the Leader and the Executive to account by appointing Improvement and Scrutiny Committees to question decisions and review policies.

## **How Decisions are Made**

The Executive is the part of the Council which is responsible for most day-to-day decisions. The Executive is made up of a Cabinet with Council Leader comprising nine Councillors appointed each year by the full Council. When major decisions (known as key decisions) are to be discussed or made, these are published in the Executive's forward plan in so far as they can be anticipated. These major decisions will be discussed with Council officers at a meeting of the Executive. The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

## **Improvement and Scrutiny**

There are three Improvement and Scrutiny Committees which support the work of the Executive and the Council as a whole. These allow citizens to have a greater say in Council matters by holding inquiries in public into matters of local concern. These lead to reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery, and other public bodies. The Improvement and Scrutiny Committees also monitor the decisions of the Executive. They can 'call-in' a decision which has been made by the Executive but not yet implemented. This enables the

Committees to consider whether the decision is appropriate. They may recommend that the Executive reconsider the decision. They may also be consulted by the Executive or the Council on forthcoming decisions and the development of policy.

### **Community Forums**

In order to give local citizens a greater say in Council affairs arrangements will be made for elected Members to attend Community Forums within their area. They will involve County Councillors of each division, be held in public, and include a public question time.

### **The Council's Staff**

The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationship between officers and Members of the Council.

### **Citizens' Rights**

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureaus can advise on individuals' legal rights.

Where members of the public use specific Council services, for example as a parent of a school pupil they have additional rights. These are not covered in this Constitution.

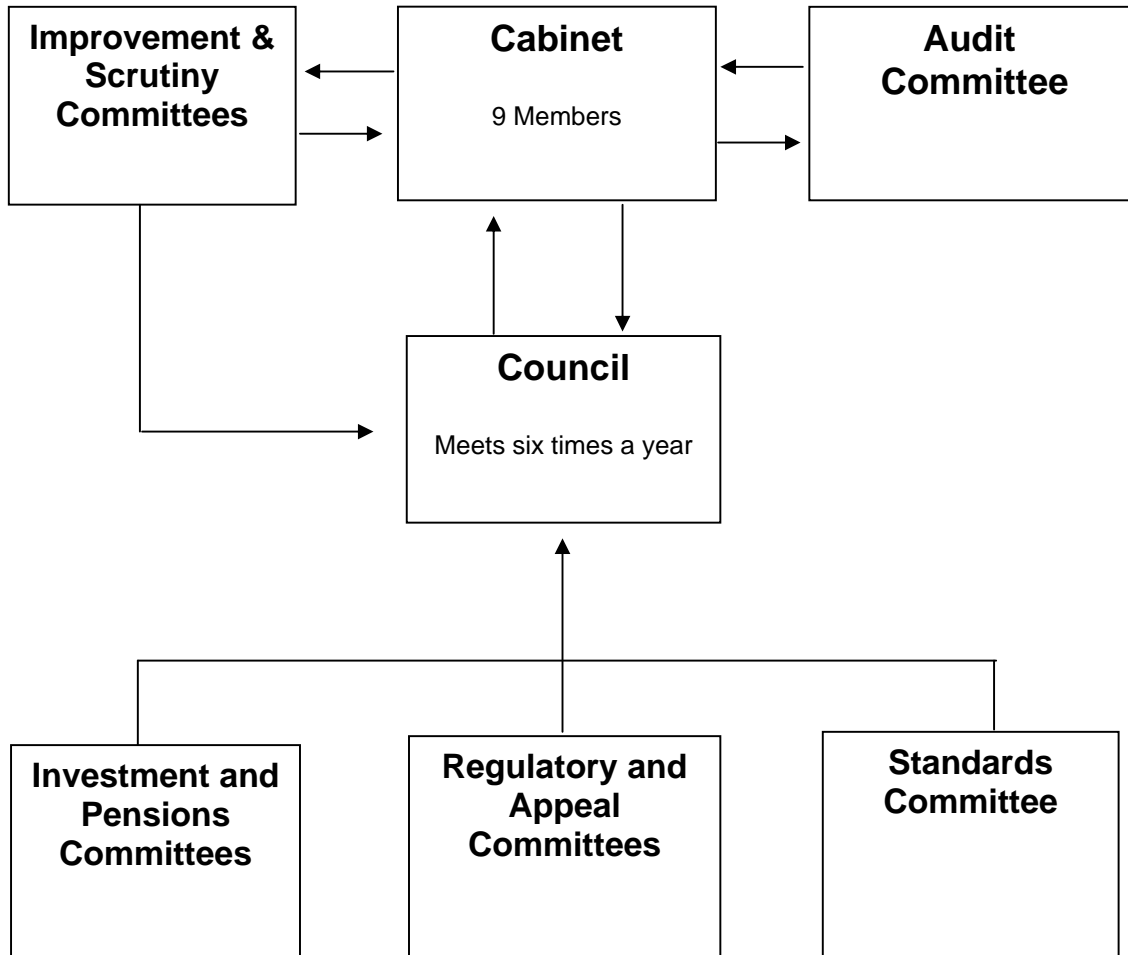
Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council, Cabinet and committees except where, for example, personal or confidential matters are being discussed;
- present petitions, including a petition to request a referendum on a mayoral form of Executive;
- participate in the Council's question time and contribute to investigations by an Improvement and Scrutiny Committee;

- find out, from the Executive's forward plan, what major decisions are to be discussed by the Executive or decided by the Executive or officers, and when;
- use the County Council's complaints procedure regarding any action by the Council – leaflets are available e.g. through the Call Centre 'Call Derbyshire' (tel: 08456 058056) or libraries.
- attend meetings of the Executive where key decisions are being discussed or decided;
- see reports and background papers and any record of decisions made by the Council and Executive;
- complain to the Council;
- complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- complain to the Standards Committee if they have evidence which they think shows that a councillor has not followed the Council's Code of Conduct; and
- inspect the Council's accounts and make their views known to the external auditor.

The Council welcomes participation by its citizens in its work. Access the Council's Website through [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk). For further information on your rights as a citizen, please contact the Chief Executive or the Director of Legal Services at County Hall, Matlock, Derbyshire, DE4 3AG (Telephone: 01629 538303; e-mail: [john.mcelvaney@derbyshire.gov.uk](mailto:john.mcelvaney@derbyshire.gov.uk)).

## NEW POLITICAL ARRANGEMENTS



## **Part 2**

# **Articles of the Constitution**

# **Article 1 – The Constitution**

## **1.1 Powers of the Council**

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

## **1.2 The Constitution**

This Constitution and all its appendices, is the Constitution of the Derbyshire County Council.

## **1.3 Purpose of the Constitution**

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
2. support the active involvement of citizens in the process of local authority decision-making;
3. help councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no one will review or scrutinise a decision in which they are directly involved;
7. ensure that those responsible for the decision making are clearly identifiable to local people and that they explain the reasons for the decisions; and
8. provide a means of improving the delivery of services to the community.

#### **1.4 Interpretation and Review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

## Article 2 – Members of The Council

### 2.1 Composition and eligibility

- (a) **Composition.** The Council will comprise 64 members, otherwise called councillors. One councillor will be elected by the voters of each electoral division in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the county or those living or working there will be eligible to hold the office of councillor.

### 2.2 Election and terms of councillors

The regular election of councillors is held on the first Thursday in May every four years. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### 2.3 Roles and functions of all councillors

- (a) **Key roles.** All councillors will:
  - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (ii) represent their communities and bring their views into the Council's decision-making process, ie become the advocate of and for their communities;
  - (iii) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
  - (iv) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
  - (v) be involved in decision-making;
  - (vi) be available to represent the Council on other bodies; and

- (vii) maintain the highest standards of conduct and ethics.

**(b) Rights and duties**

- (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.
- (iii) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Rules in Part 4 of this Constitution.

**2.4 Conduct**

Members of the Council are guided by the Derbyshire County Council Code of Conduct for Members and have undertaken to abide by it. The ethical framework has been developed with guidance from Standards for England and the Standards Committee will organise training for Members on it.

**2.5 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Part 6 of this Constitution.

## Article 3 – Citizens and the Council

### 3.1 Citizens' Rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the area have the right to vote. Citizens may also sign a petition to request a referendum for an elected mayor form of Constitution). The Council's Petition Scheme is set out at Appendix A of this Article.
- (b) **Information.** Citizens have the right to:
  - (i) attend meetings of the Council and committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) attend meetings of the Executive;
  - (iii) find out from the forward plan what key decisions will be taken by the Executive and when;
  - (iv) see reports and background papers and any records of decisions made by the Council and the Executive; and
  - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to participate in the Council's Question Time and contribute to investigations by the Improvement and Scrutiny Committees.
- (d) **Complaints.** Citizens have the right to complain to:
  - (i) the Council itself under its complaints scheme;
  - (ii) the Local Government Ombudsman after using the Council's own complaints scheme;
  - (iii) about a breach of the Code of Conduct for Members.

### **3.2 Citizens' responsibilities**

Citizens must not be violent, abusive or threatening to councillors or officers and must not willfully harm things owned by the Council, councillors or officers.

## **DERBYSHIRE COUNTY COUNCIL**

### **PETITION SCHEME**

#### **Petitions**

Derbyshire County Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. All petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

The County Council has decided that a petition for the purposes of this Petition Scheme must be signed by 10 or more persons who live, work or study in the Council's area.

Petitions can be presented in paper or electronic format. Paper petitions should be sent to:

The Director of Legal Services  
Derbyshire County Council  
County Hall  
Matlock  
Derbyshire  
DE4 3AG

Electronic petitions can be created, signed and submitted online at [www.derbyshire.gov.uk/petitions](http://www.derbyshire.gov.uk/petitions)

Under normal circumstances, a petition will be presented to the appropriate Cabinet Member meeting. Details of these meetings can be found at [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk) or by contacting the Head of Democratic Services and Scrutiny either by telephone on 01629 538321 or by email on [petitions@derbyshire.gov.uk](mailto:petitions@derbyshire.gov.uk). If you would like to present your petition to the appropriate Cabinet Member meeting, or would like your County Councillor or someone else to present it on your behalf, please contact the Head of Democratic Services at least 10 working days before the meeting and they will talk you through the process.

If your petition has received more than 7,500 (just under 1% of the Derbyshire population) signatures or more it will also be scheduled for a Full Council debate and, if this is the case, we will let you know whether this will happen at the same meeting at which you presented your petition or a later meeting of the Full Council.

### **What are the guidelines for submitting a petition?**

Petitions submitted to the Council must include:

- a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take.
- the name and address and signature of any person supporting the petition (which may be an address where signatories live, work or study).

Petitions should be accompanied by contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the website. If the petition does not identify a petition organiser, we will contact signatories to the petition to agree who should act as petition organiser.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before any local or national election or referendum, we may need to deal with your petition differently – if this is the case, we will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the Council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

### **What will the Council do when it receives my petition?**

An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again. It will also be published on our website.

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council debate, or a senior officer giving evidence, then the acknowledgment will confirm this and tell you when

and where the meeting will take place. If the petition needs more investigation, we will tell you the steps that we plan to take.

If the petition applies to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or concerns a matter where there is already an existing right of appeal, other procedures apply.

We will not take action on any petition which we consider to be vexatious, abusive or otherwise inappropriate and will explain the reasons for this in our acknowledgement of the petition.

To ensure that people know what we are doing in response to the petitions we receive, the details of all the petitions submitted to us will be published on our website, except in cases where this would be inappropriate. Whenever possible we will also publish all correspondence relating to the petition (all personal details will be removed). When you sign an e-petition, you can elect to receive this information by email. We will not send you anything which is not relevant to the e-petition you have signed, unless you choose to receive other emails from us.

### **How will the Council respond to petitions?**

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a Cabinet Member meeting or Full Council.
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- undertaking consultation
- holding a meeting with petitioners
- referring the petition for consideration by one of the Council's Improvement and Scrutiny Committees\*
- writing to the petition organiser setting out our views about the request in the petition

\*Improvement and Scrutiny Committees are committees of Councillors who are responsible for scrutinising the work of the Council. In other words, the Improvement and Scrutiny Committee has the power to hold the Council's decision makers to account.

In addition to these steps, the Council will consider all the specific actions it can potentially take on the issues highlighted in a petition.

If your petition is about something over which the Council has no direct control, for example the local railway or hospital, we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners and where possible, will work with these partners to respond to your petition. If we are not able to do this for any reason (for example, if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information on the services for which the Council is responsible here: [http://www.derbyshire.gov.uk/Council/Council\\_works/](http://www.derbyshire.gov.uk/Council/Council_works/) or by contacting the Head of Democratic Services and Scrutiny.

If your petition is about something for which a different council is responsible, we will give consideration as to the best method for responding to it. This might consist of simply forwarding the petition to the other council, but could involve other steps. In any event, we will always notify you of the action we have taken.

### **Full Council Debates**

If a petition contains more than 7,500 signatures it will be debated by the Full Council unless it is a petition asking for a senior Council officer to give evidence at a public meeting. This means that the issue raised in the petition will be discussed at a meeting which all Councillors can attend. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting.

The petition organiser (or their nominee) will be given five minutes to present the petition at the meeting. The petition will then be discussed by Councillors for a maximum of 15 minutes. The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee. Where the issue is one on which the Council's Cabinet is required to make the final decision, the Council will decide whether to make recommendations to inform that decision. The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

## **Officer evidence**

Your petition may ask for a senior Council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior Council officer to explain progress on an issue, or to explain the advice given to Elected Members to enable them to make a particular decision. The senior officers who may be asked to give evidence will be the Council's Chief Officers or their nominees.

If your petition contains more than 3,750 signatures, the relevant Chief Officer (or their nominee) will give evidence at a public meeting of the Council's appropriate Improvement and Scrutiny Committee.

The list of Chief Officers that can be called to give evidence is set out below:

- Mr N Hodgson - Chief Executive
- Mr B Buckley - Deputy Chief Executive and Strategic Director for Children and Younger Adults
- Mr B Robertson - Strategic Director of Adult Care
- Mr M Molloy - Strategic Director of Cultural and Community Services
- Mr I Stephenson - Strategic Director of Environmental Services
- Mr D Lowe - Strategic Director of Policy and Community Safety
- Mr D Hickman - Director of Transformation
- Mr J McElvaney - Director of Legal Services
- Mr P Handford - Director of Corporate Finance
- Mr T Compai - Director of Human Resources
- Mr J Goacher - Director of Property
- Mr R Cook - Director of Communications

You should be aware that the Improvement and Scrutiny Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance, if the named officer has changed jobs. The Committee may also decide to call the relevant Councillor, usually the Cabinet Member or where appropriate, the local Councillor, to attend the meeting. Committee members will ask the questions at this meeting, but you will be able to suggest questions to the Chairman of the Committee by contacting the Head of Democratic Services and Scrutiny either by telephone on 01629 538321 or by email on [scrutiny@derbyshire.gov.uk](mailto:scrutiny@derbyshire.gov.uk) up to three working days before the meeting.

## **E-petitions**

The Council welcomes e-petitions which are created and submitted through our website [www.derbyshire.gov.uk/petitions](http://www.derbyshire.gov.uk/petitions). E-petitions must follow the same guidelines as paper petitions as detailed in this Petition Scheme. The petition organiser will need to provide us with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of 12 months.

When you create an e-petition, it may take five working days before it is published online. This is because we have to check that the content of your petition is suitable before it is made available for signature.

If we feel we cannot publish your petition for some reason, we will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do this within 10 working days, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.

When an e-petition has closed for signature, it will automatically be submitted to the Director of Legal Services. In the same way as a paper petition, you will receive an acknowledgement within 10 working days. If you would like to present your e-petition to a Council meeting, please contact the Head of Democratic Services and Scrutiny within 10 working days of receipt of the acknowledgement.

A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgment and response will also be published on this website.

## **How do I 'sign' an e-petition?**

You can see all the e-petitions currently available for signature here [www.derbyshire.gov.uk/petitions](http://www.derbyshire.gov.uk/petitions). When you sign an e-petition you will be asked to provide your name, your postcode and a valid email address. When you have submitted this information you will be sent an email to the email address you have provided. This email will include a link which you must click on in order to confirm the email address is valid. Once this step is complete, your 'signature' will be added to the petition. People visiting the e-petition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

### **What can I do if I feel my petition has not been dealt with properly?**

If you feel that we have not dealt with your petition properly, the petition organiser has the right to request to one of the Council's Improvement and Scrutiny Committees review the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve the prospects for a review if the petition organiser gives a short explanation of the reasons why the Council's response is not considered to be adequate.

The County Council has three Improvement and Scrutiny Committees, each with their own areas of responsibility as follows:

- Resources
- People
- Places

For further details of these committees, including their areas of responsibility and details of when and where they meet, refer to [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk) or contact the Head of Democratic Services and Scrutiny.

The appropriate Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the Council's Cabinet and arranging for the matter to be considered at a meeting of the Full Council.

Once the request has been considered the petition organiser will be informed of the results within 5 working days. The results of the review will also be published on our website.

The provisions contained within the Petition Scheme will be the subject of regular review.

## Article 4 – The Full Council

### 4.1 Meanings

(a) **Policy Framework.** The policy framework means the following plans and strategies:-

- Annual Library Plan;
- Children’s and Young People’s Plan;
- Community Care Plan;
- Sustainable Community Strategy;
- County Community Safety Agreement;
- Local Transport Plan;
- Plans and strategies which together comprise the Development Plan;
- Youth Justice Plan;
- Council’s Corporate Plan;
- Food Law Enforcement Service Plan;
- Adult Services Plan;
- and any other Strategy, Plan or Agreement that requires the approval of full Council.

(b) **Budget.** 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 and the setting of virement limits.

### 4.2 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework and the budget;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which

would be contrary to the policy framework or contrary to, or not wholly in accordance with, the budget;

- (d) appointing the Leader;
- (e) agreeing or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an Executive function or has been delegated by the Council;
- (g) adopting a members' allowances scheme under Article 2.5;
- (h) changing the name of the area, conferring the title of honorary alderman;
- (i) confirming the appointment of the head of paid service;
- (j) making, amending, revoking, re-enacting or adopting bye-laws and promoting or opposing the making of local legislation or personal Bills;
- (k) making arrangements for the appointment of members of the Police Authority;
- (l) all other matters which, by law, must be reserved to Council.

#### **4.3 Council Meetings**

There are three types of Council meeting:-

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### **4.4 Responsibility for Functions**

The Council will keep up to date Part 3 of this Constitution setting out the allocation of responsibilities for the Council's functions.

## **Article 5 – Chairing the Council**

### **5.1 Role and Function of the Chairman of the Council**

The Chairman will be elected by the Council annually. The Chairman will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on the Executive are able to hold the Executive to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the Council; and
6. to attend such civic and ceremonial functions as the Council and the Chairman determine appropriate.

## Article 6 – Improvement and Scrutiny Committees

### 6.1 Terms of Reference

The Council will appoint the three Improvement and Scrutiny Committees, listed below, to discharge the functions conferred by section 21 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the following table:

Committee	Scope
Resources	Budget Strategy; Financial Management; Asset Management; Efficiency/Value For Money Programme (Service Redesign, Property Rationalisation, Council Transport Coordination): Procurement; Personnel (Including Single Status); Legal Services; Member Services; Council Strategic Policy; Community Strategy and Council Plan; Derbyshire Partnership Forum; External Relations; Regional/Leadership Group; (East Midlands Leaders Board/East Midlands Councils) Public Relations, Policy and Research; Strategic Planning; Local Planning Frameworks; Minerals and Waste Planning; Local Economic Assessment; HCA Single Conversation; Community Infrastructure Levy; Economic Development; DDEP Single Programme; Creative Industries Programme; Markham Vale; Credit Crunch Programme; Related External Funding.
Places	Libraries, Museums, Arts and Heritage; Archives and Modern Records; Sports Development; Tourism; Historic Buildings; Voluntary Sector; Highways and Bridges; Street Lighting; Public Footpaths; Road Safety; Public Transport; Community Transport; Schools and Special Needs Transport; The Countryside; Community Leadership; Community Consultation; Crime and Disorder Partnerships; Youth Offending; Domestic Violence; Action on Drugs; Trading Standards; Emergency Planning; Travellers; Community Cohesion; Social Inclusion; Parish Council Liaison; Core Systems; IT Services; Climate Change; Carbon Management; Waste Management; Land Reclamation; Minerals and Waste Planning; Local Planning Frameworks
People	School Capital Planning; School Capital Programme; Surplus Places; School Support (Personnel, Finance and IT); School Admissions; School Improvement; Governor Support; Home to

	<p>School Transport; Special Educational Needs; Adult Education; Connexions; FE Colleges; Links to Faith Schools; Improving Outcomes for Young People; Children’s Services Planning; Multi-Agency Partnerships; Safeguarding; Children’s Disabilities; Engagement with Young People; Engagement with Parents and Carers in Service Design; Youth Service; Early Years and Childcare; Children’s Centres; Links to Communities Portfolio – Young People’s Safety, Youth Offending, Domestic Violence.</p> <p>Home Care; Residential Care; Day Care; Supporting People; Safeguarding; Adults with Learning Difficulties; Adults with Physical Disabilities; Adults with Mental Ill-Health; Multi-Agency Partnerships; Personalisation; Reducing Health Inequalities; Welfare Rights; Links with Health And Voluntary Sector</p>
--	---

## 6.2 General Role

Within their terms of reference, the Improvement and Scrutiny Committees will:

- (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council’s functions;
- (ii) make reports and/or recommendations to the full Council and/or the Executive and/or any policy, joint or area committee in connection with the discharge of any functions;
- (iii) consider any matter affecting the area or its inhabitants; and
- (iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive.

## 6.3 Specific Functions

- (a) **Policy development and review.** The Improvement and Scrutiny Committees may:

- (i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
  - (ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
  - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
  - (iv) question members of the Executive and committees and chief officers about their views on the issues and proposals affecting the area; and
  - (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- (b) **Scrutiny.** The Improvement and Scrutiny Committees may:
- (i) review and scrutinise the decisions made by and performance of the Executive and/or committees and council officers both in relation to individual decisions and over time;
  - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
  - (iii) question members of the Executive and or committees and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
  - (iv) make recommendations to the Executive and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address an Improvement and Scrutiny Committee and local people about their activities and performance; and
  - (vi) question and gather evidence from any person (with their consent).

- (c) **Best Value.** To oversee specific Best Value reviews undertaken on the Council's functions; receive progress reports; and make recommendations for consideration by the Executive on measures to be implemented.
- (d) **Annual Report.** The Improvement and Scrutiny Committee must report annually to full Council on their working and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers.** The Improvement and Scrutiny Committees may exercise overall responsibility for the work programme of the officers employed to support their work.

#### 6.4 **Proceedings of Improvement and Scrutiny Committees**

The Improvement and Scrutiny Committees will conduct their proceedings in accordance with the Improvement and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

#### 6.5 **Scrutiny Management Committee**

The Council will establish a Scrutiny Management Committee with the terms of reference set out in Appendix A to this Article.

## **APPENDIX A – SCRUTINY MANAGEMENT COMMITTEE TERMS OF REFERENCE**

### **1.0 Composition of the Management Committee.**

1.1 The Committee shall comprise 7 Elected Members allocated in line with the political balance of the Council.

### **2.0 Meetings.**

2.1 The Committee will meet as necessary in order to discharge its functions set out below.

### **3.0 Role of the Management Committee**

#### **3.1 General**

3.1.1 To determine matters affecting the Council's Improvement and Scrutiny function in general.

3.1.2 To consider and formalise a view on consultation documents relating to the development of the Scrutiny function.

3.1.3 To determine matters including work programmes, falling within the remit of more than one Improvement and Scrutiny Committee

3.1.4 To consider urgent matters relating to the business of individual Improvement and Scrutiny Committees where it is not possible or practical to convene a meeting of the full Committee.

3.1.5 To make recommendations to the Executive arising from consideration of matters affecting scrutiny raised under section 3.2.1 of the terms of reference.

3.1.6 To consider general matters affecting the scrutiny function referred from the Executive.

#### **3.2 Specific**

3.2.1 To monitor, review and amend scrutiny processes in respect of:

- Constitutional matters

- Scrutiny protocols
- Call-in
- The Scrutiny Liaison Group
- Councillor Call For Action
- Petitions
- Publicity
- Equality and Diversity
- Member Training and Development

3.2.2 To produce and agree the Annual Scrutiny report to Council.

4.0 Review

4.1 The Terms of Reference of the Committee to be reviewed annually.

## **Article 7 – The Executive**

### **7.1 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.

### **7.2 Form and composition**

The Executive will consist of the Council Leader together with eight councillors appointed to the Executive by the Leader.

### **7.3 Leader**

The Leader will be a councillor elected to the position of Leader at the annual meeting of the Council following the County Council elections, by the Council for a four year term. The Leader will hold office until:

- (a) he/she resigns from the office; or
- (b) he/she is suspended from being a councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she is no longer a councillor; or
- (d) he/she is removed from office by resolution of the Council.

### **7.4 Other Executive members**

Other Executive members shall hold office until:

- (a) they resign from office; or
- (b) they are suspended from being councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they are no longer councillors; or

- (d) they are removed from office, either individually or collectively, by resolution of the Council.

#### **7.5 Proceedings of the Executive**

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

#### **7.6 Responsibility for functions**

The Council will maintain a list in Part 3 of this Constitution setting out which individual members of the Executive, committees of the Executive, officers or joint arrangements are responsible for the exercise of particular Executive functions.

## **Article 8 – Regulatory and other committees**

### **8.1 Regulatory committees**

The Council will appoint two Regulatory Committees:-

The Regulatory – Planning Committee, and

The Regulatory – Licensing and Appeals Committee.

8.2 These committees will be responsible for the functions specified in Part 3 of this Constitution.

## **Article 9 – The Standards Committee**

### **9.1 Standards Committee**

The Council meeting will establish a Standards Committee.

### **9.2 Composition**

The Standards Committee will be composed of at least two councillors, who may not include the Leader, and at least one independent member. The Chair of the Standards Committee must always be an independent member.

### **9.3 Role and Function**

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors, co-opted members, and church and parent governor representatives;
- (b) assisting the councillors and co-opted members and church and parent governor representatives, to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train councillors, co-opted members, and church and parent governor representatives, on matters relating to the members' Code of Conduct;
- (f) granting dispensations to councillors, co-opted members and church and parent governor, representatives from requirements relating to interests set out in the Members' Code of Conduct;
- (g) taking any action required on the receipt, assessment and handling of any complaint against a member;

- (h) taking any action required on requests to review assessment decisions;
- (i) taking any action for the investigation and determination of any complaint against a member;
- (j) dealing with any reports on any matter from the Monitoring Officer, Standards for England, or the Adjudication Panel;
- (k) considering and determining, in accordance with Section 3 of the Local Government and Housing Act 1989, any application by an officer for exemption from political restriction, and taking any other connected action ;
- (l) responsibility for the recruitment processes for independent members and making recommendations for appointment to the Council.

#### 9.4 **Additional Roles of Standards Committees**

The Committee will be responsible for:

- (a) the overview of the whistle blowing policy;
- (b) the overview of complaints handling and Local Government Ombudsman investigations; and
- (c) oversight of the Constitution.

## **Article 10 – The Audit Committee**

### **10.1 Audit Committee**

The Council will establish an Audit Committee.

### **10.2 Composition**

The Audit Committee will comprise at least two members of the Council, but shall not include in its membership any member of the Executive.

### **10.3 Role and Function**

The committee will be responsible for the functions set out below:

- Approving the Annual Audit Plan of the Council
- Monitoring progress against the Annual Audit Plan
- Considering matters referred to the committee by the Council's external auditor
- Approving the Annual Statement of Accounts
- Consideration of the annual Governance Statement.

## **Article 11 – Joint Arrangements**

### **11.1 Arrangements to promote well-being**

The Council or the Executive, in order to promote the economic, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

### **11.2 Joint Arrangements**

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions which are not Executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a joint committee with those other local authorities.
- (b) The Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees with those other local authorities.
- (c) Except as set out below, the Executive may only appoint Executive members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) The Executive may appoint members to a joint committee from outside the Executive in the following circumstances:
  - the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Executive may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within the area;

- the joint committee is between the County Council and a single district council and relates to functions of the Executive of the County Council. In such cases, the Executive of the county council may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within the area.

In both of these cases the political balance requirements do not apply to such appointments.

### **11.3 Access to Information**

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the members of a joint committee are members of the Executive in each of the participating authorities then its access to information regime is the same as that applied to the Executive.
- (c) If the joint committee contains members who are not on the Executive of any participating authority then the access to information rules contained within the Local Government Act 1972 will apply.

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

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

### **11.5 Contracting Out**

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

Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision-making.

## Article 12 – Officers

### 12.1 Management Structure

- (a) **General.** The Council may engage such employees (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Council will engage persons for the following posts, who will be designated chief officers:

Post	
Chief Executive (and Head of Paid Service)  Director of Legal Services (and Monitoring Officer) Director of Communication and Access to Services Director of Corporate Finance Director of Human Resources Director of Property Director of Transformation	Overall corporate management and operational responsibility (including overall management responsibility for all officers). Provision of professional advice to all parties in the decision making process. Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions. Representing the Council on partnership and external bodies (as required by statute or the Council). Corporate services, access, administration, communication, information, finance, human resources, legal and property
Strategic Director Children and Young Adults	Children's Services, Child Protection, Social and Welfare Services, Educational Services, School Planning and Support
Strategic Director Adult Care	Home care services, residential care, day care, supporting people, services for adults with learning difficulties, services for adults with physical disabilities, mental ill-health services, multi-agency partnership for adults, vulnerable adults.
Strategic Director Cultural and Community Services	Libraries, Museums, Records , Culture, Consumer Protection, Food Safety, Weights & Measures, Public Analyst and Scientific Officer
Strategic Director Environmental Services	Development Control, Planning, Regeneration, Highways and Transportation, Waste Disposal and Countryside Services
Strategic Director Policy and Community Safety	Policy, Regeneration, Research, Scrutiny function, Community Safety services, LAA.

- (c) **Head of paid service, monitoring officer and chief financial officer.** The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Director of Legal Services	Monitoring Officer
Director of Corporate Finance	Chief Finance Officer

Such posts will have the functions described in Article 12.2-12.4 below.

- (d) **Structure.** The head of paid service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is illustrated at Part 7 of this Constitution.

## 12.2 Functions of the head of paid service

- (a) **Discharge of functions by the Council.** The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

## 12.3 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, employees and the public.
- (b) **Ensuring lawfulness and fairness of decision-making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Executive in relation to an Executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to

maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports.** The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper officer for access to information.** The Monitoring Officer will ensure that Executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (g) **Advising whether Executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework.
- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, budget and policy framework issues to all.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

#### 12.4 **Functions of the Chief Finance Officer**

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Executive in relation to an Executive function – and the Council's external auditor if he or she considers that any

proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

- (b) **Administering of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, budget and policy framework issues to all councillors and the elected mayor and will support and advise councillors and officers in their respective roles.
- (e) **Giving financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### 12.5 **Duty to provide sufficient resources to the monitoring officer and chief finance officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### 12.6 **Conduct**

Officers will comply with the Officers' Code of Conduct referred to in Part 5 of this Constitution.

#### 12.7 **Employment**

The recruitment, selection and dismissal of officers will comply with the policies of the Council and the Officer Employment Rules set out in Part 4 of this Constitution.

## **12.8 Statutory Scrutiny Officer**

Under the provisions of the Local Democracy, Economic Development and Construction Act 2009, the Head of Democratic Services and Scrutiny has been designated as the County Council's Statutory Scrutiny Officer.

## **Article 13 – Decision Making**

### **13.1 Responsibility for decision-making**

The Council will issue and keep up-to-date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

### **13.2 Principles of decision-making**

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (ie the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of advice from officers;
- (c) respect for human rights;
- (d) a presumption in favour of openness; and
- (e) clarity of aims and desired outcomes.

### **13.3 Types of decision**

13.3.1 Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.2 will be made by the full Council and not delegated.

13.3.2 Key Decisions. A “Key Decision” which must be included in the Forward Plan is an Executive decision which is likely –

- (a) to result in the authority incurring expenditure which is, or making savings which are, significant having regard to the Authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in Derbyshire.

13.3.3 A decision taker may only make a key decision in accordance with the requirement of the Executive Procedure Rules set out in Part 4 of this Constitution.

#### **13.4 Decision making by the full Council**

Subject to Article 13.8 the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.5 Decision making by the Executive**

Subject to Article 13.8, the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.6 Decision making by Improvement and Scrutiny Committees**

Improvement and Scrutiny Committees will follow the Improvement and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

#### **13.7 Decision making by other committees and sub-committees established by the Council**

Subject to Article 13.8, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

#### **13.8 Decision making by Council bodies acting as tribunals**

The Council, a councillor or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to fair trial contained in Article 6 of the European Convention on Human Rights.

## **Article 14 – Finance, Contracts and Legal Matters**

### **14.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 4 of this Constitution.

### **14.2 Contracts**

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

### **14.3 Legal Proceedings**

The Director of Legal Services is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council, or in any case where the Director of Legal Services considers that such action is necessary to protect the Council's interests.

### **14.4 Authentication of documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Director of Legal Services or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract entered into on behalf of the local authority in the course of the discharge of an Executive function shall be made in writing.

### **14.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Director of Legal Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Director of Legal Services should be sealed. The affixing of the Common Seal will be attested by the Director of Legal Services, Assistant Director of Legal

Services or Principal Solicitor. An entry of every sealing of a document shall be made and consecutively numbered in a book provided for the purpose and signed by the person who was present at the sealing and attested the seal.

## **Article 15 – Review and Revision of the Constitution**

### **15.1 Duty to monitor and review the constitution**

The Standards Committee will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

#### **Protocol for monitoring and review of constitution by Monitoring Officer**

A key role for the monitoring officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the monitoring officer may:

1. observe meetings of different parts of the member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### **15.2 Changes to the Constitution**

**Approval.** Changes to the constitution will only be approved by the full Council after consideration of the proposal by the Standards Committee.

## **Article 16 – Suspension, Interpretation and Publication of the Constitution**

### **16.1 Suspension of the Constitution**

**Limit to suspension.** The Articles of the Constitution may not be suspended. The Rules of procedure may be suspended by the full Council to the extent permitted within those Rules and the law.

### **16.2 Interpretation**

The ruling of the Chairman of the Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### **16.3 Publication**

- (a) The Chief Executive will give a printed copy of the Constitution to each member of the authority upon delivery to him/her of that individual's declaration of acceptance of office or the member first being elected to the Council.
- (b) The Director of Legal Services will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Director of Legal Services will ensure that the summary of the Constitution is made widely available within the areas and is updated as necessary.

## **Schedule 1: Description of Executive Arrangements**

The following parts of this Constitution constitute the Executive arrangements;

1. Article 6 (Improvement and Scrutiny Committees) and the Improvement and Scrutiny Procedure Rules;
2. Article 7 (The Executive) and the Executive Procedure Rules;
3. Article 11 (Joint Arrangements);
4. Article 13 (Decision making), and the Access to Information Procedure Rules;
5. Part 3 (Responsibility for Functions).

## **Part 3**

# **Responsibility for Functions**

# Responsibility for Functions

## The Cabinet

### 1.1 Cabinet

The Cabinet will be responsible for guiding the Council in the formulation of its corporate plan of objectives and key priorities. Within the policy framework, budgets and major plans approved by the full Council, the Cabinet will have Executive responsibility for the implementation of the Council's key goals and objectives.

It will operate within the Scheme of Delegations set out in this document.

The Leader appoints the Cabinet of nine Members and allocates cross-service Portfolio responsibilities to the Cabinet members.

### 1.2 Cabinet Portfolio Responsibilities

#### **LEADERSHIP AND CULTURE**

- Council strategic policy
- Community Strategy and Council Plan
- Derbyshire Partnership Forum
- Local Enterprise Partnership – D2N2
- External relations - (East Midlands Councils/LGA/Government and MPs etc)
- Public relations, policy and research
- Libraries, museums, arts and heritage
- Archives and modern records
- Tourism
- Historic buildings

- Community Consultation/Community leadership

## **HIGHWAYS AND TRANSPORT**

- Highways and bridges
- Street lighting
- Public footpaths
- Road safety
- Public transport
- Community transport
- The countryside (links to Vice Chairman as Countryside Ambassador)

## **ADULT CARE**

- Home care
- Residential care
- Day care
- Supporting people
- Safeguarding
- Adults with learning difficulties
- Adults with physical disabilities
- Adults with mental ill-health
- Multi-agency partnerships
- Personalisation
- Links with health and voluntary sector

## **PUBLIC HEALTH**

- Voluntary sector/Big Society
- Crime and disorder partnerships
- Youth offending (shared with Young People)
- Domestic violence
- Action on drugs
- Emergency planning
- Community cohesion
- Health improvement
- Equalities
- Sports development
- Parish Council liaison
- Registration Service
- Coroners Service
- Advice
- Relationship with PCTs/GPs
- Reducing health inequalities

## **EDUCATION**

- School capital planning
- School capital programme
- Surplus places
- School support – personnel, finance and IT

- School admissions
- School improvement
- Governor support
- Home to school transport
- Special educational needs
- Adult education
- Careers Advice
- FE colleges
- Links to faith schools and academies

### **FINANCE AND MANAGEMENT**

- Budget strategy
- Financial management
- Asset management
- Efficiency/value for money programme
  - service redesign
  - property rationalisation
  - council transport co-ordination
- Procurement
- Personnel
- Legal services
- Member services

## **TECHNOLOGY AND RECYCLING**

- Change Management
- Property (renovation and energy efficiency)
- Core systems
- IT services
- Climate change/energy efficiency
- Carbon management
- Waste management
- Land reclamation

## **REGENERATION**

- Strategic planning
- Minerals and waste planning
- Local planning frameworks
- Local economic assessment
- Housing and infrastructure
- Economic development
- Derbyshire Economic Partnership and LEP Liaison
- Business support and skills
- Markham Vale
- Apprenticeships
- Trading Standards
- Related external funding

## **YOUNG PEOPLE**

- Improving outcomes for young people
- Children's services planning
- Multi-agency partnerships
- Safeguarding
- Children's disabilities
- Engagement with young people
- Engagement with parents and carers in service design
- Youth Service
- Early years and childcare
- Children's Centres
- Links to Public Health portfolio – young people's safety, youth offending, domestic violence
- Links to voluntary sector and Big Society

## **Scheme of Delegations**

### **2.1 Aims**

Democratic accountability should be the key aim of the Scheme of Delegation together with:-

- Member authority for policy/strategic decisions
- Effective scrutiny of policy/strategic issues
- Officer responsibility for service delivery
- Effective monitoring of service performance.

### **2.2 Member Advantages**

The Scheme of Delegation details below the decisions to be taken at the different levels. For Leading Members it will deliver the:-

- Ability to control key/strategic decisions in Council and Cabinet
- Opportunity to consider and shape policy within the Cabinet
- Involvement in Council Plan/Budget formulation in informal 'Star Chamber' type arrangements.

For individual Cabinet Members the advantages are:-

- Enhanced authority and responsibility to implement policy within agreed frameworks
- Increased ability to take speedier policy decisions
- Greater involvement in shaping service delivery in line with policy
- Improved information on service activities and executive decisions
- Improved service personal/political profile

- Protection of personal positions and interests through collective responsibility in Council/Cabinet and support from Chief Officers.

Other councillors will see improvements through:-

- Greater involvement, given the range of decisions proposed for Council
- An enhanced role through Improvement and Scrutiny Committees
- More responsibility for inspecting and monitoring service delivery within their local area
- Increased influence via the Sustainable Community Strategy Plan etc in shaping partner organisation activity.

### 2.3 **Member-Officer Relationships**

The Scheme of Delegation will only work effectively if there is mutual understanding and trust between members and officers.

However, to support the Scheme of Delegation and particularly where matters are delegated from Cabinet to Cabinet Member and Chief Officers, it is suggested that:-

- ‘Service Plans’ and ‘Resource Statements’ should be of sufficient detail to provide an effective framework for decisions
- Information on service delivery should be enhanced to ensure that members know what is going on without having to ask
- Protocols, or sets of criteria, for the detailed implementation of specific policy or service areas should be agreed between the Cabinet Member and Chief Officer
- The principle is reinforced that Chief Officers err on the side of caution in informing members of decisions that might have political implications
- Decisions delegated to officers within departments are dealt with in a structured way with proper records and audit trails so it is clear who is responsible and what the reasons were for the decisions.

## 2.4 **Matters for Council**

The following subject areas are those that should be, or are legally required to be, dealt with by the full Council:-

- Council's Constitution
- Community Strategy
- Council Plan
- Council's Revenue Budget
- Council's Capital Strategy
- Annual Accounts
- Budget Monitoring Reports
- Best Value Performance Plan
- Corporate Asset Management Plan
- Corporate ICT Strategy
- Corporate Human Resource Strategy
- Service plans and subject plans
- Major policy changes
- Reports of (key) inspections
- Portfolio holder reports
- Receipt of (major) petitions
- Representation on the Police Authority, Fire Authority, Peak Park, LGA and County Councils' Network.
- Civic, formal, personnel and pension issues
- Presentations, celebrations and external accolades

## 2.5 **Matters for Cabinet**

The Local Government Act 2000 delegates most functions to the Cabinet or Executive, for example.

- Policy formulation within and across services
- Performance indicator and target setting
- Recommending Corporate Plans to Council
- Recommending Service Plans to Council
- Agreeing variations to Service Plans
- Monitoring Council Plan and Best Value targets
- Monitoring Service Plan delivery
- Preparing budget estimates
- Monitoring revenue/capital budget spend

- Reviewing progress on major capital schemes and other service developments
- Agreeing major organisational changes
- Agreeing virement between service areas
- Agreeing externally funded initiatives not included in Service Plans
- Agreeing detailed policy implementation criteria
- Agreeing Best Value Review reports
- Agreeing policy representations to Government
- Agreeing representation on 'larger than local' county, regional and national bodies.

## 2.6 Principles of Delegation

The principles set out below guide the allocation of responsibility for decision-making at Cabinet Member and chief officer level.

In respect of matters delegated from Cabinet to individual Cabinet Member, the focus would be on policy issues within the policy and expenditure frameworks agreed by Council/Cabinet:-

- Policy matters, internal to the service, and required to provide guidance to officers to ensure significant policy decisions are implemented
- Details of policy matters delegated by Cabinet once principles have been agreed
- Expenditure items not specifically detailed within Service Plans but not sufficiently significant in scale to refer to Cabinet
- Budget virement items within a service where only one Portfolio holder is involved
- Responses to consultation documents not referred to Cabinet.
- The Portfolio holder may wish to consult their Lead Support Member on whether matters should go to Cabinet.

In respect of matters delegated from Cabinet to chief officer in consultation with Cabinet Members, the focus would be on service management issues with policy or political implications (no surprises policy)

- Significant management decisions which could have an adverse or controversial impact on the delivery of services or achievement of agreed targets
- Development of Service Plans and Policy Statements for consideration by Cabinet

In respect of matters delegated from Cabinet to a chief officer these would relate solely to the management of services and resources covering:-

- Management of services within the framework of the Council Plan, Service Plans and Council policies and standards agreed by Members
- Management of resources within the framework of the corporate 'Resource Plans' and service 'Resource Statements' (ie finance, ICT, personnel and property) agreed by Members.

## **2.7 Matters for Cabinet Members**

Cabinet Members are authorised to make decisions required in the area of their individual Cabinet Portfolio.

- (a) Cabinet Members may take policy, budget and expenditure decisions in accordance with the principles set out in paragraph 2.6 above.
- (b) Cabinet Members may take decisions on tenders and contracts in accordance with Standing Orders In Relation To Contracts.
- (c) Cabinet Members may take decisions on virement, audit, debt write-off and placing of orders in accordance with Financial Regulations.
- (d) Cabinet Members may deal with certain petitions in accordance with the Council's Petition Scheme.
- (e) Cabinet Members may make decisions on:
  - (i) appointment of Members to outside bodies (Leader of the Council)

- (ii) appointment of governors (Cabinet Member for Education)
  - (iii) attendance of other Members at courses and conferences
  - (iv) grants under the Lottery Treasure Chest Fund (Regeneration), tourism programme (Regeneration), community safety (Community Safety)
- (f) The Cabinet Member for Finance and Management may take decisions concerning the acquisition or disposal of land.
- (g) In liaison with the Leader of the Council, Cabinet Members may make decisions on human resources issues including:-
- (i) Cases of Voluntary Early Retirement, redundancy, efficiency retirement ie involving payments not exceeding £10,000. Cases where greater payments are involved will be decided by Cabinet.
  - (ii) Monitoring eg equal opportunities, attendance management within their portfolios.
  - (iii) Employment Tribunal applications (for information).
  - (iv) Overpayments and write offs, concerning amounts between £3,000 and £5,000.
  - (v) Significant honoraria payments ie where it is proposed to pay an honoraria in excess of the following:
    - a payment for providing temporary cover up to the bottom point of the grade of the absent employee
    - a payment recognizing additional responsibility or effort, up to three increments of salary scale to a maximum of £2,500.
- All other honoraria will be referred to in a half yearly report to the Cabinet Member.
- (vi) Car, telephone allowances outside policies
  - (vii) Extensions to sick pay outside policies

(viii) Leave applications outside current policies.

(ix) Minor variations beyond grades

## **2.8 Matters for Chief Officers**

The powers delegated to chief officers in consultation with Cabinet Members are set out in the Appendix to this part of the Constitution.

## **3.1 Matters for Regulatory and Appeals Committees**

The Functions Regulations specify certain functions which cannot be allocated to Cabinet and will have to be dealt with by the Regulatory Committees. These include:-

- Town and Country Planning matters
- Commons Registration
- Other licensing and regulation matters.

3.2 The Regulatory Committees could also deal with appeals on:-

- Personnel matters
- School transport
- Social Care registration and inspection.

## **4.1 Matters for the Audit Committee**

- Approving the Annual Audit Plan of the Council
- Monitoring progress against the Annual Audit Plan
- Considering matters referred to the Committee by the Council's external auditor
- Approving the Annual Statement of Accounts
- Consideration of the Annual Governance Statement

Their terms of reference will continue to evolve and will be kept up to date in Article 10.

## **5.1 Matters for the Standards Committee**

- Producing the Code of Conduct for Members

- Organising training and awareness of standards of conduct
- Dealing with complaints against members and overseeing complaints procedures
- Local Government Ombudsman reports on maladministration
- Safeguarding the Constitution.

### 6.1 **Matters for the Improvement and Scrutiny Committee**

There will be three Improvement and Scrutiny Committees with responsibility to:-

- Review and scrutinise decisions made and actions taken by the Cabinet and elsewhere in the Council and make reports and recommendations
- Scrutinise Health and other partner organisation activities
- Report on matters affecting the county
- Oversee Best Value reviews

The terms of reference for committees will evolve and will be kept up to date in the Articles of the Constitution.

### 7.1 **Local Choice Functions**

These are allocated as follows:

Local Act Functions	Cabinet
Appeals Against Authority Decisions	Regulatory – Licensing and Appeals Committee
Arrangements for Pupil Exclusion Appeals	Cabinet
Arrangements for Admission Appeals	Cabinet
Appeals by Governing Bodies	Cabinet
Arrangements for Answering Police Questions	Cabinet
Appointment of Members to Police	Full Council

## Authority

Best Value Reviews	Improvement and Scrutiny Committee and Cabinet
Contaminated Land	Cabinet
Obtaining Information concerning interests in land.	Cabinet
Agreements for Execution of Highways Works	Cabinet
Appointments to Outside Bodies	Cabinet

All of these matters may be further delegated by Cabinet or the body mentioned. Established arrangements will remain as they are, subject to any review.

### 8.1 **Functions not to be the responsibility of the Authority's Executive**

These are allocated as follows:

- |   |  |
|---|--|
| (a) Functions relating to Town and Country Planning and Development Control | Regulatory – Planning Committee  |
| (b) Functions relating to Licensing and Registration                        | Regulatory – Licensing and Appeals Committee   |
| (c) Functions relating to Health and Safety at work                         | These are powers that assist in enforcement and are delegated to chief officers.   |
| (d) Functions relating to elections   | Those functions that apply to a County Council include the appointment of a County Returning Officer and this would now be a matter for a Committee of Full Council. Other powers would be exercisable by the County |

		Returning Officer (eg taking steps to fill a casual vacancy).
(e)	Functions relating to name and status of areas and individuals	Full Council
(f)	Power to make, amend, revoke or re-enact bye-laws.	Full Council
(g)	Power to promote or oppose local or personal bills	Full Council
(h)	Functions relating to pensions etc	Director of Finance Investment Committee Pensions Committee
(i)	Miscellaneous Functions	
	Public Rights of Way and other functions relating to highways	Regulatory – Licensing and Appeals Committee (unless delegated to Local Area Committees)
	Power to make Standing Orders	Full Council
	Power to Appoint Staff	Full Council
	Dealing with Maladministration	Standards Committee
	Authority's Statement of Accounts, Income and Expenditure and Balance Sheet	Full Council
	Duty to make arrangements for proper administration of financial affairs	Full Council

These matters may also be delegated, but not to Cabinet. Established arrangements will remain as they are, subject to any review.

## APPENDIX TO PART 3

### **POWERS DELEGATED TO CHIEF OFFICERS IN CONSULTATION WITH CABINET MEMBERS**

1. Part A of this document sets out the general delegations. They are all subject to the provisions of Part B of this document.
2. Part B of this document sets out the restrictions and conditions applicable to the exercise of any delegated powers by chief officers including the general powers and the specific powers in Part C.
3. Part C sets out the specific delegations to departmental chief officers.

#### **PART A**

- A1** Chief officers will take all action necessary to implement their Service Development Plan within the terms in which the Plan was approved by the County Council.
- A2** Chief officers may, within the approved budget, therefore, exercise all matters of day-to-day administration and operational management of the services and functions for which they are responsible to the County Council, the Cabinet or a Committee which delegation shall include taking and implementing decisions including in particular any decision which is not a key decision and which is concerned with maintaining the operation or effectiveness of those services or with a matter incidental to the discharge of the Council's functions or which falls within the scope of a policy decision taken by the Council.
- A3** Chief officers may make, issue and serve such notices, orders, statements and other documents as may be necessary or appropriate for those purposes or to give effect to or carry out any decision under delegated powers.
- A4** Chief officers may delegate the exercise of any of the powers or responsibilities delegated under this Constitution.
- A5** Chief officers are authorised to institute, or defend, or withdraw, or compromise such claims or legal proceedings whether civil or criminal, connected with any function or service where such action is necessary to protect the Council's interests.

- A6** Each chief officer shall be the Proper Officer for the purposes of all statutory and regulatory provisions relating to the identification, listing and availability of background papers for any report where such report is within the scope of those provisions and the chief officer is responsible or a contributing author.
- A7** Chief officers may commence criminal proceedings for any breach of any law or bye-law the enforcement of which the County Council are empowered to undertake and which falls within the purview of the services and functions for which they are responsible and where empowered to do so by law may seek to recover any costs incurred by the County Council.
- A8** Chief officers may, for the purposes connected with the services or functions for which they are responsible, exercise any statutory powers conferred on the County Council to enter land or premises and carry out inspections.
- A9** Chief officers may exercise statutory powers conferred on the County Council to require information as to the ownership, occupation or use of land or premises or otherwise.
- A10** Chief officers may select applicants for inclusion, or vary the terms of approval for, and suspend firms from, any list of approved contractors for the maintenance of which that chief officer is responsible.
- A11** In liaison with the Chief Executive, chief officers may make decisions on human resources issues:-
- (i) Departmental monitoring of equal opportunities, attendance, ill-health retirements, etc
  - (ii) Implementation of workforce training plans,
  - (iii) Minor variations within grades,
  - (iv) Temporary secondments and similar arrangements,
  - (v) Appeals against discipline, grievance, etc
  - (vi) Ill-health retirements within policy,

- (vii) Minor overpayments and write-offs,
- (viii) Minor honoraria,
- (ix) Work experience/placements, and
- (x) Secondary employment.

## **PART B**

### **B1** Delegations to chief officers do not include:-

- (a) any matter reserved to the full Council;
- (b) any matter which by law may not be delegated to an officer;
- (c) any matter reserved to the Cabinet or a Committee;
- (d) any matter which constitutes a key decision.

### **B2** The exercise of delegated powers by a chief officer shall:-

- (a) be in accordance with the policies and plans of the County Council and their decisions from time to time,
- (b) be in accordance with the County Council's Constitution including the principles of delegation at 2.6 above and the Financial Regulations from time to time in force; and
- (c) not be outside the powers and duties conferred on the Council by law.

**B3** Chief officers may exercise delegated powers provided that where there are policy or political issues, this is in consultation with the Cabinet Member holding the appropriate portfolio in the Cabinet for powers which are the responsibility of Cabinet and in consultation with the Chair of the appropriate Committee for powers which are the responsibility of any Committee. Within that consultation, consideration should be given to whether it would be appropriate to consult any other Member or other person prior to exercising any delegated power.

**B4** In exercising delegated powers it is the duty of an officer to whom the exercise of powers is delegated to consult such other officers and the Chief Executive, Director of Finance and Director of Legal Services as may be appropriate in the circumstances and to have regard to any advice given.

- B5** In respect of any matter where an officer proposes to exercise delegated powers where there is doubt as to whether the proposed exercise is contrary to the policy framework or contrary to or not wholly in accordance with the budget then the advice of the Director of Finance and the Director of Legal Services must first be sought.
- B6** Any delegation under Part A of this document is subject to any more specific provision relating to a delegation to a particular chief officer under Part C of this document.

## **SPECIFIC POWERS DELEGATED TO CHIEF OFFICERS IN THE DISCHARGE OF THE FUNCTIONS OF THE COUNTY COUNCIL**

### **PART C – INDEX**

- Chief Executive
  - Director of Legal Services
  - Director of Corporate Finance
  - Director of Human Resources
  - Director of Property
  - Director of Transformation
- Strategic Director – Children and Younger Adults
- Strategic Director - Environmental Services
- Strategic Director – Adult Care
- Strategic Director - Cultural and Community Services
  - Head of Trading Standards
- Strategic Director – Policy and Community Safety

### **Specific Delegations to Chief Executive**

- C1** Notwithstanding any other provision of this Constitution, the Chief Executive shall have power, after discussion, if practicable, with the Leader of the Council or the relevant Cabinet Member or Chairman, to take such action deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the timescale involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee.

### **Specific Delegation to the Deputy Chief Executive**

**DCE1** The Deputy Chief Executive shall have a similar power to take action deemed necessary and expedient in circumstances of urgency as is set out in

C1 above where the Chief Executive is not available or to assist the Chief Executive.

### **Specific Delegations**

#### **- Director of Legal Services**

- CS1** To be the County Council's solicitor and in that capacity to take all necessary steps, including the obtaining of Counsel's Advice in connection with any matter concerning the County Council.
- CS2** To be the Proper Officer for any purpose for which the County Council has not designated another officer to be Proper Officer.
- CS3** To maintain the Registers of:
- (a) The financial and other interests of Members and co-opted members of the County Council as required by the Local Government Act 2000.
  - (b) Officers' declarations of interest in contracts and other pecuniary interests.
  - (c) Any other matter relating to the interests of Members and co-opted members which the County Council may from time to time establish.
- CS4** In special circumstances, to approve attendance by Members at conferences and other events for the purposes of Members' Allowances.
- CS5** To prosecute, withdraw, defend, compromise, appeal and appear in proceedings on behalf of the County Council in any court of law, whether criminal or civil, tribunal, inquiry, chamber or other hearing or before any Judge, Registrar, Recorder, Magistrate, Coroner, Inspector, Arbitrator, Mediator, or expert.
- CS6** To designate officers of the County Council as being authorised under Section 223 of the Local Government Act 1972 to institute, prosecute, defend or appear on the County Council's behalf in proceedings before a Magistrates' Court and to conduct such proceedings notwithstanding that the officer concerned may not be a solicitor holding a current practising certificate.

- CS7** To appoint, in writing, in pursuance of Section 60 of the County Courts Act 1984 (as amended) officers of the County Council to address or appear before the District Judge in the County Court in proceedings which relate to the recovery of possession of a property belonging to the County Council and for the recovery of rent, mesne profits, damages or other sums claimed by the County Council in respect of the occupation by any person of such property.
- CS8** To establish and service a Complaints Review Panel comprising three independent persons (ie not elected members) with expert knowledge of Social Services to consider complaints under the terms of the National Health Service and Community Care Act 1989 which Panel is to make recommendations to the County Council on the course of action to be taken about any such complaint.
- CS9** To make arrangements for dealing with the following kinds of appeal under the Schools Standards and Framework Act 1998:
- Admission Appeals
  - Appeals against exclusion
  - Appeals by Governing Bodies
- CS10** To be the Proper Officer and the County Council's Returning Officer for the purpose of the election of County Councillors and to undertake all the duties of those officers pursuant to the Representation of the People Act 1983 and the Local Government Act 1972.
- CS11** To give public notice of any vacancy in the office of Councillor pursuant to Sections 86 and 87 of the Local Government Act 1972.
- CS12**
- (a) To approve premises for the solemnization of marriages.
  - (b) To carry out the County Council's duties under the Marriage Acts 1949 and 1994 (other than those relating to fees and final appeals).
  - (c) To set such fees as are appropriate for ensuring full costs recovery to the County Council in respect of civil marriage ceremonies on local authority approved premises.

- CS13** To authorise, in cases of urgency and subject to consultation with the Chair of the Safety of Sports Grounds Panel:-
- (a) an application to a Court under the Safety of Sports Grounds Act 1975 to prohibit or restrict the admission of spectators;
  - (b) the issue of a Prohibition Notice under the Fire Safety and Safety of Places of Sport Act 1987 when the risk to spectators at a ground is so great that until steps have been taken to reduce it to a reasonable level, the admission of spectators ought to be restricted or prohibited.
  - (c) the service of a Preliminary Notice to Enforce Safety at Outdoor Sports Grounds where it is confirmed that a stand provides cover for more than 500 people.
- CS14** To make technical amendments to safety certificates.
- CS15** In consultation with the Chairman of the Regulatory Planning and Control Committee to decide the final form of the conditions which the County Council would wish to be attached to, and the framework of, any Section 106 Agreement, if the Secretary of State was minded to grant permission for a particular development following an appeal in relation thereto.
- CS16** In consultation with the Strategic Director Environmental Services to enter into agreements for the execution of highways works under the Highways Act 1980.
- CS17** Under the Common Land (Rectification of Registers) Act 1989, to:
- (a) decide whether any objection has been duly made in accordance with the provisions of the Act and any regulations made thereunder;
  - (b) refer any objection which has been duly made to Commons Commissioner for determination; and
  - (c) rectify the Register of Common Land or the Register of Town or Village Greens as necessary consequent upon the determination of any objection under the Act.

**- Director of Corporate Finance**

- DF1** To carry out all Treasury Management activities within the Treasury Management Policy Statement and Annual Treasury Management Strategy approved from time to time by the Executive and in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities and the raising of loans and the issuing of County Council bills in the case of emergency.
- DF2** To take and implement any decision which he or she is empowered to take in accordance with Financial Regulations.
- DF3** Responsibility for day-to-day management of the Local Government Pension Scheme Fund Investment in accordance with the arrangements reported to the Investment Panel on 1 August 2001, and trust funds.
- DF4** In respect of pensions:
- (a) commutation of a pension to a lump sum where ill-health retirees have a life expectancy of less than twelve months
  - (b) waiving employees' contributions after forty years' membership in the Local Government Pension Scheme before age sixty until such time that further membership can be accrued.

**- Director of Human Resources**

- DHR1** To be responsible for the preparation, maintenance, monitoring and review of the County Council's corporate health and safety policies.
- DHR2** After consultation with the Director of Finance, to approve and implement national and provincial pay awards as soon as possible after agreement and notification from the appropriate body, subject to any element of discretion being referred to the Executive for consideration.

**- Director of Property**

- DP1** To take all necessary steps to secure the cessation of any unauthorised use or occupation of the County Council's land and property assets.
- DP2** To submit all planning and planning related applications, including those for the County Council's own operational development and highway schemes; for the disposal of surplus land/property; for Conservation Area consent; and for Listed Building consent.
- DP3** In consultation with the appropriate chief officers to accept, grant or review interests and rights over the Council's existing land and premises for a term of not more than seven years as may be deemed necessary or appropriate, subject to the value of the interest not exceeding £20,000 per annum. A schedule of such transactions will be maintained and reported quarterly to the Cabinet Member for Strategic Policy and Budget.

**- Director of Transformation**

- DT1** To be responsible, for the preparation, maintenance, monitoring, review and implementation of the County Council's Information Technology Strategy, which embraces the County Council's Information Security Policy.

**Specific Delegations to the Strategic Director – Children and Young Adults**

- SDCYA1** To take and implement decisions which relate to benefits or support available to individual parents and/or individual children or young people which are matters for decision by the County Council as Local Education Authority.
- SDCYA2** To apply in the Family Proceedings Court for an Education Supervision Order in respect of a child of compulsory school age who is not being properly educated.
- SDCYA3** To take and implement decisions to exercise statutory powers relating to the health and welfare or school attendance of individual children and to take all steps in any related statutory procedures.

- SDCYA4** To issue licences for the employment of children pursuant to the Children and Young Persons Act 1933, byelaws made under that Act, and the Children and Young Persons Act 1963.
- SDCYA5** To approve additional exceptional closure days associated with capital building works or on health and safety grounds.
- SDCYA6** To secure and purchase placements in non-maintained schools and schools maintained by other authorities.
- SDCYA7** To issue statements of special educational needs.
- SDCYA8** To deal with complaints under the terms of the National Health Service and Community Care Act 1989 and the Children Act 1989 by actioning the recommendations of the Complaints Review Panel.
- SDCYA9** To receive reports of the monthly visits made to Children’s Homes in accordance with the Children’s Homes Regulations 1991.
- SDCYA10** To approve or refuse requests for the County Council to meet legal costs in connection with applications for adoption.
- SDCYA11** To undertake, together with an Adoption Panel comprising not less than three specified officers, all functions under the Adoption Act 1976 and Adoption Agencies Regulations 1983 as amended by the Children Act 1989, relating to the adoption of children.
- SDCYA12** To institute, intervene in, or defend, on the County Council’s behalf, wardship proceedings and to appear on the Council’s behalf in any wardship proceedings involving the County Council.

### **Specific Delegations to the Strategic Director - Environmental Services**

- SDES1** To determine submissions (including reserved matters) and variations to approved submissions made as a requirement of a planning condition except where:
- (a) in determining the application the Regulatory – Planning and Control Committee have indicated that they wish to consider the submission

(b) in a case where district or parish council or local Member have been consulted they have submitted a significant objection on planning grounds to the submission

(c) in the view of the Strategic Director - Environmental Services the submission which whilst not falling within a or b above has raised considerable public concern or issues which it is proper for the Regulatory – Planning and Control Committee to be aware of before the submission is determined.

- SDES2** To determine submissions made under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) where there are no significant objections on planning grounds from the local Member or other consultee.
- SDES3** To make directions requiring an application for planning permission in respect of certain proposals for mineral exploration and removal of material from mineral working deposits. (Directions made under Article 7 of the Town and Country Planning (General Permitted Development) Order 1995).
- SDES4** To approve attendance by officers at meetings with district councils, parish councils or at public meetings in connection with the development control functions of the Authority.
- SDES5** To authorise officers to give evidence at public inquiries on behalf of the Authority in relation to amended circumstances arising at an inquiry and to deal with submissions in relation to schedules of conditions at an inquiry.
- SDES6** To determine applications for Certificates of Lawful Use or Development under Sections 191 and 192 of the Town and Country Planning Act 1990.
- SDES7** To authorise the issuing of Enforcement Notices, Stop Notices and Breach of Conditions Notices in respect of the enforcement of planning control and to determine that in specific cases formal enforcement action is not appropriate. In exceptional circumstances authorisation may be given for the institution of injunctive proceedings where these are considered necessary and appropriate.

**SDES8** To submit comments in relation to proposals for development by public utilities or Government Departments where no significant objections on planning grounds have been raised by the local Member(s).

**SDES9** To determine proposals made by the County Council under the provisions of the Town and Country Planning General Regulations 1992 for development which the Authority itself proposes to carry out where it is considered to be in accordance with the Development Plan and other policies approved by the Council ie non-statutory policy documents and emerging Development Plan policy and no significant objections on planning grounds\* to the development have been received within the prescribed period from the relevant District or Parish Council(s), the local Member(s) or as a result of publicity given to the application.

**SDES10** To determine planning applications for County Matter development or submissions made for the Review of Mineral Working Sites where the proposal is considered to be in accordance with the Development Plan and other policies approved by the Council ie non-statutory policy documents and emerging Development Plan policy and no significant objections on planning grounds\* to the application have been received within the prescribed period from the relevant District or Parish Council(s), the local Member(s) or as a result of publicity given to the application.

\* “Significant objection on planning grounds” will be interpreted as an objection on planning grounds which is not capable of being overcome by further negotiation and amendments and/or the imposition of appropriate planning conditions.

**SDES11** Unless the observations which the Director proposes to give would represent a material departure from a policy of the County Council or the County Structure Plan, the Minerals Local Plan, the Waste Local Plan, or Strategic Policy Guidance for which the County Council is responsible:-

(a) to give the County Council’s observations to district councils, adjoining authorities, Government Departments and statutory undertakers/public utilities in response to consultations on planning, planning-related or environmental applications.

(b) to give the County Council's observations to the Environment Agency in response to consultations on an intention to issue a waste disposal licence which accords with a previous planning permission, or proposed modification to an existing licence and any proposed exemption.

**SDES12** To refer to the Secretary of State for the Environment any district council's proposal for its own development which would be detrimental to the County Council's interests or which would be contrary to the County Council's views.

**SDES13** To authorise the Peak District National Park Authority to discharge the County Council's powers and functions under the Ancient Monuments and Archaeological Areas Act 1979 in respect of that part of the Peak District National Park which is within Derbyshire, without prejudice to the exercise concurrently by the County Council within that area of their powers under the Act.

**SDES14** To exercise the following powers and duties under the Highways Act 1980 in relation to footpaths, bridleways and byways open to all traffic:-

Section	Provision
122	Temporary diversion where highway about to be repaired or widened (while the work is in progress)
134(8)	Service of notice on occupier of land to make good the surface of a public path after ploughing, and subsequent execution of such notice.
135	Temporary diversion of path ploughed under Section 134.
135A	Temporary diversion to avoid danger to users from prescribed works.
135B	Functions relating to the making good and removal of obstructions before expiry of temporary diversion under Section 135A.
143(1)	Service of notice to remove structures from highways within a time specified in the notice.
143(2)	Removal of structures after non-compliance with a notice served under 143(1).
145(1)	Service of notice to remove or enlarge a gate

- across a bridleway.
- 146(2) Service of notice of intention of the local authority to repair stiles and gates on a public path on those occasions where a landowner has failed to maintain them in a safe condition and subsequent execution of such notice.
- 147 To authorise the erection of stiles etc.
- 149(1) Notice to require the removal forthwith of nuisances deposited on the highway.
- 149(2) Removal of dangerous nuisances after non-compliance with a notice served under 149(1).
- 154(1) Notice to remove a hedge, tree or shrub overhanging a highway which endangers or obstruct users.
- 154(2) Notice to remove the danger from dead, diseased, damaged or insecurely rooted trees, hedges or shrubs on land adjoining the highway.
- 154(4) Notice to undertake work to remove the danger from trees etc after non-compliance with a notice served under 154(2).
- 164(1) Service of notice to require the removal of barbed wire on land adjoining the highway, which constitutes a nuisance.

**SDES15** To carry out and implement the works and to take the steps referred to in any notice served pursuant to paragraph 5 above in accordance with the provisions of the notice and the relevant statutory provisions.

**SDES16** (a) To carry out the duties of the County Council to assert and protect the rights of the public to the use and enjoyment of footpaths, bridleways and roads used as public paths, under Section 130 of the Highways Act 1980.

(b) To carry out the duties of the County Council under the Rights of Way Act 1990.

**SDES17** To make temporary closure orders for public paths under Section 14 of the Road Traffic Regulation Act 1984 because of works on, or near, the path or because of the likelihood of danger or damage.

- SDES18** To keep the register of information with respect to maps, statements and declarations deposited with the County Council under Section 31(6) of the Highways Act 1980.
- SDES19** To keep the register with respect to applications under Section 188ZA, 118C, 119ZA and 119C of the Highways Act 1980.
- SDES20** To apply for a variation of an Order made under Section 130B of the Highways Act 1980.
- SDES21** To keep the register of prescribed information with respect to applications under Section 53(5) of the Wildlife and Countryside Act 1981.
- SDES22** To enter into agreements with respect to means of access to any access land under Section 35 of the Countryside and Rights of Way Act 2000.
- SDES23** To authorise the Peak District National Park Authority to discharge the County Council's functions, as contained in the Countryside Act 1968, in relation to sites.
- SDES24** In relation to highways which are not footpaths, bridleways or byways open to all traffic, under the Highways Act 1980:-
- (a) to carry out highway drainage works under Section 100
  - (b) to grant permission, under Section 139, for the deposit of builders' skips on highways subject to such conditions as he thinks fit or the refusal of such permission under Section 139(2)
  - (c) to grant licences to plant under Section 12
  - (d) to serve notices under Section 154 concerning cutting or felling of trees which overhang or are a danger to users of roads or footways
  - (e) to discharge the County Council's functions under Sections 172 and 173 concerning hoardings erected during building operations

- (f) to consent to the placing etc of certain apparatus in, or under, a highway upon such conditions as the Director thinks fit, or the refusal of such permission under Section 181
- (g) to determine the amount of any deposit or security required in respect of buildings having a frontage to a new state or private street in accordance with Section 219 and 220 including supervision and legal charges in the case of Section 38 Agreements and Bonds
- (h) to undertake works by, or on behalf of, other persons under Section 296
- (i) to grant notices of exemption under Section 219(4) exempting private developers from the requirement to secure the cost of streetworks associated with development
- (j) to discharge the County Council's powers and duties under Sections 132, 144, 164, 169, 170, 171, 178, 179, 180 and 184
- (k) in consultation with the Chairman of the Regulatory Committee to carry out the County Council's duties to assert and protect the rights of the public to the use and enjoyment of highways (other than footpaths, bridleways and roads used as public paths) under Section 130 of the Highways Act 1980.
- (l) to apply for a variation of an order made under Section 130B of the Highways Act 1980.

**SDES25** After seeking the views in each case of the local member(s) of the County Council affected thereby and the relevant district council and parish council, and provided the local member(s) of the County Council so consulted do not object thereto, to exercise the powers and duties of the County Council under Sections 90A and 90I of the Highways Act 1980 (road Humps and other Traffic Calming Works); and under the Road Traffic Regulation Act 1984 (as amended) in respect of the following matters:-

- (a) Traffic Regulation Orders (Part I of Act )
- (b) Experimental traffic schemes (Part I of Act)

- (c) Speed limits (Part VI of Act)
- (d) Administrative and other powers and duties for the purposes of items (a) to (h) above (Parts IX and X of Act)

**SDES26** Powers and duties of the County Council under the Road Traffic Regulation Act 1984 (as amended) that are not dealt with by DES25 above:-

- (a) Temporary prohibitions and restrictions on roads (Part II of Act)
- (b) Provision of crossings and playgrounds (Part III of Act)
- (c) Provision of off street parking (Part IV of Act)
- (d) Provision of placing of traffic signs (Part V of Act)
- (e) Placing of bollards and other obstructions (Part VII of Act)
- (f) Administrative and other powers and duties for the purposes of items (a) to (e) above (Parts IX and X of Act)

**SDES27** In consultation with the Chief Constable, district councils, County Teachers, and other representatives of organisations concerned with road safety, to maintain, monitor, review and implement a road safety strategy within the County Council's road safety policies.

**SDES28** To approve district councils' applications for orders to amend charges for parking places in accordance with the powers contained in Section 35 of the Road Traffic Regulations Act 1984.

**SDES29** To take action on behalf of the County Council, after consultation where appropriate with district councils, under Sections 5 (traffic signs), 6 (damage to footways), 7 (plans of new streets), 8 (vesting of former highway land) and 10 (grass verges etc) of the Derbyshire Act 1981.

**SDES30** To grant street works licences under the New Roads and Street Works Act 1991.

- SDES31** To deal with individual cases where an altered highway produces a significant and obvious hardship either by the alteration directly or by a substantial increase in traffic which has been triggered by the alteration and where the total cost of providing discretionary noise insulation does not exceed the current cost of £5,000 per scheme (index linked in subsequent years by the national GDP).
- SDES32** To designate a footpath as a cycle track under the Cycle Tracks Act 1984.
- SDES33** To agree to requests for extensions of time for the submission of a Scheme of Conditions under the Environment Act 1995 where a concurrent consolidation application for planning permission has been made and the submission of such Scheme would not be required were the planning permission applied for to be granted.
- SDES34** To take and implement any decision necessary to fulfil the obligations of the County Council pursuant to, and in accordance with, a Service Level Agreement relating to the Council's participation in the Safety Camera Partnership including approving the annual operational plan for the scheme.
- SDES35** The determination of applications to fell or prune trees covered by a County Council Tree Preservation Order except where objections are received to the proposed works.

### **Specific Delegations to the Strategic Director – Adult Care**

- SDAC1** To purchase such services and facilities as are required to discharge the Council's social services functions.
- SDAC2** To take and implement decisions in respect of the discharge of the County Council's functions with regard to asylum seekers.
- SDAC3** To waive or reduce the charges made by the County Council for services provided by the Adult Care Department where the Director considers that the circumstances are such that full payment of the charges would cause particular hardship or otherwise be inappropriate.
- SDAC6** To determine the value of property to be taken into account for Part III accommodation assessment charges where the property continues to be occupied or where there are unusual

circumstances, for example a joint owner (other than spouse) remaining in occupation.

- SDAC7** To approve recovery of debts and inclusion of assets disposed of in Part III accommodation assessments under the National Assistance Act 1948 where it appears that the disposal may have been made in order to effect a reduction in accommodation charges.
- SDAC8** To decide on cases where it is alleged that assets have been abandoned in the context of an assessment of charges for residential care.
- SDAC9** To appoint and to authorise Approved Social Workers pursuant to the Mental Health Act 1983.
- SDAC10** To deal with complaints under the terms of the National Health Service and Community Care Act 1989 and the Children Act 1989 by actioning the recommendations of the Complaints Review Panel.

**Specific Delegations to the Strategic Director – Cultural and Community Services**

- SDCS1** To select, acquire and as necessary discard all books and other printed matters, recordings, films, pictures and other libraries and heritage material.
- SDCS2** To collaborate with other libraries and organisations in:
- (i) inter-lending of books and other library materials
  - (ii) reciprocal use of services by non-residents
  - (iii) the acquisition and storage of books and other libraries and heritage materials.
- SDCS3** To dispose of surplus or used library materials.
- SDCS4** To waive or reduce libraries and heritage charges where the Director considers that the circumstances are such that full payment of the charges would cause particular hardship or otherwise be inappropriate.

- SDCS5** To apply the Bye-Laws and regulations as currently constituted and enforce such regulations as agreed by Cabinet for the operation of the Culture and Community Services Department.
- SDCS6** To authorise closure of departmental buildings in emergency situations.
- SDCS7** To authorise the undertaking of activities which assist with the promotion of the service in accordance with County Council Policy.
- SDCS8** To ensure compliance with the Code of Ethics for Museums 2002.

**Specific Delegations to the Head of Trading Standards**

- HTS1** To undertake enforcement and administrative duties under the relevant provisions of legislation listed in reports approved by Cabinet and the Regulatory Licensing and Appeals Committee as appropriate.

**Specific Delegation to Strategic Director Policy and Community Safety**

- SDPCS1** To discharge the County Council's functions under Section 17 of the Crime and Disorder Act 1998 to prevent crime and disorder.
- SDPCS2** To exercise the provisions of Section 39 of the Crime and Disorder Act 1998 to deliver appropriate youth justice services.
- SDPCS3** To apply for breach, variation or revocation of criminal orders on young offenders under the powers of the Criminal Courts (Sentencing) Act 2000.
- SDPCS4** To apply for Parenting Orders under the Anti Social Behaviour Act 2003.
- SDPCS5** To maintain, monitor, review and implement a drugs and alcohol misuse strategy.
- SDPCS6** To authorise the sharing of Council information in accordance with Section 115 of the Crime and Disorder Act 1998.

# **Part 4**

## **Rules of Procedure**

# **Rules of Procedure**

## **Council Procedure Rules**

### **STANDING ORDERS OF THE COUNTY COUNCIL**

1. Annual Meetings
2. General Meetings
3. Quorum
4. Order of Business
5. Minutes
6. Motions Requiring Notice
7. Motions Not Requiring Notice
8. Questions by Members
9. Questions by the Public
10. Rules of Debate
11. Closure Motions and Budget Motions
12. Voting
13. Disorderly Conduct
14. Petitions
15. Committees
16. Canvassing
17. Suspension and Variation
18. Interpretation

1. The **Annual Meeting** of the Council will be held on the second Wednesday in April except in an election year when the date should be determined by the Chairman of the County Council and shall be held no later than the third Wednesday after the day of election.
2. **General meetings** of the Council will take place in accordance with the programme of meetings decided at the Council's Annual Meeting. All meetings will be held at County Hall, Matlock, commencing at 2 pm.
3. **Quorum** If there are not at least 16 Members present, the Chairman will adjourn the meeting to a specified time and date.
4. The **order of business** at the Council will be as follows:
  - (a) If necessary, the appointment of the Chairman
  - (b) Chairman's announcements
  - (c) Questions submitted by the public
  - (d) Questions submitted by Members
  - (e) Minutes of the previous meeting
  - (f) Motions concerning the minutes of committees and the Cabinet
  - (g) Motions of which notice has been given
- 5.1 No discussion will take place upon the minutes of the Council except upon their accuracy.
- 5.2 The Chairman will sign the Minutes of the proceedings at the next suitable meeting.
- 5.3 Where in relation to any meeting of the Authority the next such meeting is a meeting called under paragraph 3 (Extra-Ordinary Meetings) of Schedule 12 of the Local Government Act 1972, the next following meeting of the Authority (being a meeting called otherwise than under that paragraph) shall be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) (Signing of Minutes) of that schedule.
- 6.1 **Notice of a motion** shall be given in writing or by electronic mail by the Member to the Director of Legal Services by 12noon at least 10 working days before the meeting of the Council. The Director of Legal Services will record the date of receipt in a book which shall be open to inspection by any person.

6.2 Motions for which notice has been given will be listed in the agenda in the order in which they were received unless the Member who gave notice states in writing that they wish to withdraw it.

6.3 Motions must be about matters for which the Council has responsibility or which affect its area.

7. **Notice** shall not be required for Motions

(a) Concerning the appointment of the Chairman and Vice Chairman for the year at the meeting, the accuracy of minutes of the Council, the order of business, or

(b) Proposing appointments, or references to decision-making bodies, receipt of minutes and approval of any recommendations, amendments to motions, leave to withdraw motions, adjourning the meeting or exclusion of the public, or

(c) Under Standing Orders 11 (closure of debate), 13 (that a named member be not further heard) or 17 (suspension of Standing Orders).

8. **Questions by Members**

8.1 After giving written notice to the County Secretary by 12noon on the Friday before the Council Meeting, a Member of the Council may ask the Chairman, a member of the Executive or the Chairman of any Committee or Sub-Committee a question on any matter in relation to which the Council has powers or duties or which affects Derbyshire.

8.2 An answer may take the form of:

(a) a direct oral answer;

(b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or

(c) Where the reply cannot conveniently be given orally, a written answer circulated later to the questions

8.3 A Member asking a question under this Standing Order may ask one supplementary question without notice of the Member to whom the first

question was asked. The supplementary question must arise directly out of the original question or the reply.

- 8.4 A Member may ask the nominated representative of the Derbyshire Police Authority or the Derbyshire Fire Authority a question on the discharge of the functions of the Authority. Written notice of any such questions must first be given to the Director of Legal Services by 12noon on the Friday before the Council meeting.

## **9. Questions by the Public**

### **General**

- 9.1 Members of the public who are on the Derbyshire County Council register of electors, or are Derbyshire County Council tax payers or non-domestic tax payers, may ask questions of members of the Cabinet at ordinary meetings of the Council. The maximum period of time for questions by the public at a Council Meeting shall be 30 minutes.

### **Order of Questions**

- 9.2 Questions will be asked in the order notice of them was received, except that the Chairman may group together similar questions.

### **Notice of Questions**

- 9.3 A question may only be asked if notice has been given by delivering it in writing or by fax or electronic mail to the Director of Legal Services no later than 12noon three working days before the Council Meeting (ie on a Friday when Council meets on the following Wednesday). The notice must give the name and address of the questioner and the name of the member of the Council to whom the question is to be put.

### **Number of Questions**

- 9.4 At any one meeting no person may submit more than one question, and no more than one such question may be asked on behalf of one organisation.

## **Scope of Questions**

9.5 The Director of Legal Services may reject a question if it:

- Exceeds 200 words in length;
- is not about a matter for which the Council has a responsibility, or which affects Derbyshire;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.

## **Asking the Question at the Meeting**

9.6 The Chairman will invite the questioner to put the question to the member named in the notice. If the questioner who has submitted a written question is unable to be present, he/she may ask the Chairman to put the question on his/her behalf. In the absence of the questioner, the Chairman may ask the question on the questioner's behalf, indicate that a written reply will be given, or decide that the question will not be dealt with.

## **Supplementary Question**

9.7 A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his/her original question. A supplementary question must arise directly out of the original question or the reply. The Chairman may reject a supplementary question on any of the grounds in Standing Order 9.5 above.

## **Written Answers**

9.8 The time allocated for questions by the public at each meeting will be 30 minutes. This period may be extended at the discretion of the Chairman. Any questions not answered at the end of the time allocated for questions by the public will be answered in writing. Any question that cannot be dealt with during public question time because of the non-attendance of

the Member to whom it was to be put, will be dealt with by a written answer.

### **Reference of Question to the Council Cabinet or a Committee**

9.9 Unless the Chairman decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Council Cabinet or the appropriate Committee or Sub-Committee. Once seconded, such a motion will be voted upon without discussion.

### **Record of Questions**

9.10 The Director of Legal Services will keep a record, open to public inspection, of all public questions received and will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for the rejection. Copies of all questions will be circulated to all Members and will be made available to the public attending the meeting. The Director of Legal Services will be responsible for sending to the questioner a copy of the answer provided at the Council Meeting as soon as practicable after the Council Meeting.

## **10. Rules of Debate**

10.1 Members shall stand when speaking and address the Chairman.

10.2 Whenever the Chairman rises, any member then standing shall sit and the Council shall be silent.

10.3 If two or more Members wish to speak the Chairman shall call one, ordinarily giving the other(s) a later opportunity to speak.

10.4 A motion or amendment shall not be discussed unless it has been proposed and seconded.

10.5 The proposer of a motion with the consent of the Council may alter the motion.

10.6 When a motion is under debate no other motion shall be moved except one of the motions specified in Standing Order 7.

10.7 No speech may exceed 10 minutes except with the consent of the Chairman.

- 10.8 A Member may rise on a point of order, or in personal explanation, and shall be entitled to be heard. A point of order shall relate only to an alleged breach of a Standing Order or statutory provision which the Member will specify. A personal explanation shall be confined to a relevant earlier statement which has been misunderstood.
- 10.9 The mover of the motion has a right of reply at the close of the debate on the motion or on any amendment. Any other Member may only speak a second time in a debate under Standing Order 10.8 or with the permission of the Chairman.
- 10.10 An amendment shall be relevant to the motion and shall not merely negate or be negative to it:
- i) it shall be either to refer a matter to the Cabinet or a committee; or
  - ii) to insert, add, alter or leave out words in or from the motion. A further amendment shall not be moved while an amendment is being considered.
- 10.11 The ruling of the Chairman under this Standing Order shall not be open to discussion.

## **11. Closure Motions and Budget Motions**

- 11.1 At the conclusion of a speech of a Member, another Member may move that the question be now put or the meeting or debate be adjourned. If such closure motion is seconded, and the Chairman does not rule that the matter should be discussed further on that occasion, the Chairman shall put to the vote the closure motion. In the case of a debate closed by a motion that the question be now put the right of reply of the mover of the original motion will then be exercisable.
- 11.2 No motion or amendment to propose a precept shall be considered unless it contains sufficient detail within it to justify the precept moved. In determining whether or not a particular motion or amendment is in order the Chairman shall have regard to:
- i) advice of relevant officers;
  - ii) information available within the motion or amendment concerning proposed reductions or increases in service estimates, or proposed measures which would reduce expenditure or increase income, or

- the government grant implications of the level of expenditure proposed; and
- iii) any other relevant matter.

## 12. **Voting**

- 12.1 When a vote is to be taken the Chairman shall call for a show of hands or if five Members stand a recorded vote. If there is a recorded vote a record of those voting for and against will be kept and any Member present but not declaring their vote shall be recorded as abstaining.
- 12.2 Where immediately after a vote is taken at a meeting of a relevant body, if any Member of that body so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that person cast his or her vote for the question or against the question or whether he or she abstained from voting.

In this paragraph "relevant body" means the authority, the Cabinet, a committee or sub-committee of the Authority or a relevant joint committee or sub-committee of such a body.

- 12.3 Where three or more persons are nominated for any position and there is not a majority in favour of any one person, the person having the least number of votes shall be disregarded and a fresh vote taken and so on until there is a majority in favour of one person.
- 12.4 If there are equal numbers of votes for or against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

## 13. **Disorderly Conduct**

- 13.1 If at a meeting any Member of the Council commits misconduct by persistently disregarding the ruling of the Chairman, by behaving irregularly, improperly or offensively or by wilfully obstructing the business of the Council, the Chairman or any other Member may move "that the Member named be not further heard" and the motion, if seconded, shall be put and determined without discussion.
- 13.2 If misconduct by the Member continues the Chairman shall move that the Member named shall be excluded from the meeting and the motion, if seconded, shall be put and determined without discussion.

13.3 If a member of the public interrupts the proceedings at any meeting the Chairman shall warn the person. If the interruption continues the Chairman shall order the person's removal from the meeting. In the case of a general disturbance in any part of a meeting open to the public, the Chairman shall order that part to be cleared.

13.4 The Chairman may, in the event of a disturbance interfering with the orderly despatch of business, adjourn or suspend a meeting for such period as the Chairman considers appropriate.

#### 14. **Petitions**

14.1 Any **petition** signed by 10 or more members of the public and not received to be dealt with under a procedure regulated by law, shall be dealt with in accordance with the Council's Petition Scheme (Article 3, Appendix A):

#### 15. **Committees**

15.1 When **appointing** a committee other than the Standards Committee the Council may also appoint the Chairman and Vice Chairman, who in each must be a Member of the Council.

15.2 A **substitute** Member may take the place of a Member who is unable to attend a meeting of one of the Committees or Sub-Committees. Such substitute Member, once named by a member of the absent Member's political group, will be accepted onto the Committee with power to speak and vote

15.3 The **quorum** of a committee or sub-committee shall be one quarter of the whole number of Members or two whichever is the greater number;

15.4 **Meetings** - The Chairman of a committee may call a special meeting at any time. A quarter of the Members of a committee may require the Director of Legal Services to call a special meeting. The requisition must be in writing setting out the business to be considered. The special meeting will only consider the business so set out. All meetings of committees shall be summoned by the Director of Legal Services.

15.5 **Information** - A copy of the agenda of every meeting of a Council, committee together with the index of reports of Chief Officers shall be sent to every Member of the Council.

- 15.6 **Local Members** - With the consent of the Chairman, a Member whose electoral division is directly affected by a matter or who has special knowledge which is relevant, may attend any committee and may speak (but not vote) on any particular matter.
- 15.7 **Requests from Members** - The agenda for any committee shall include consideration of any item requested by a Member of the committee, subject to the Director of Legal Services receiving written notice at least 10 working days before the date of the meeting.
- 15.8 **Application of Standing Orders** - Standing Orders 12 (voting), 13 (disorderly conduct) and 18 (interpretation) shall apply to meetings of Committees with any necessary adaptation.
16. **Canvassing** - A Member of the Council shall not solicit for any person any appointment within the Council but this shall not preclude a Member from giving a written reference for a candidate for a post.
17. **Suspension and Variation**
- 17.1 Subject to paragraph 2 of the Standing Order any of the preceding Standing Orders may be suspended so far as regards any business of the meeting where suspension is moved.
- 17.2 A motion to suspend Standing Orders shall not be moved without notice unless at least one half of the whole number of the Members of the Council are present.
- 17.3 Any motion to add to, vary or revoke any Standing Order, shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.
18. **Interpretation** The ruling of the Chairman as to the application and meaning of any Standing Order shall not be challenged at any meeting of the Council.

# Access to Information Procedure Rules

## 1. SCOPE

These rules apply to all public meetings of the Council, the Executive, Improvement and Scrutiny Committee, the Standards Committee and the Regulatory Committees (together called meetings).

## 2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

## 3. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings subject only to the exceptions in these rules.

## 4. NOTICES OF MEETING

The Council will give at least five clear days' notice of any meeting by posting details of the meeting at County Hall, Matlock.

## 5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons have been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors) will be open to inspection from the time the item was added to the agenda.

## 6. SUPPLY OF COPIES

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

- (c) if the Director of Legal Services thinks fit, copies of any other documents supplied to councillors in connection with an item

to any person on payment of a charge for postage and any other costs.

## **7. ACCESS TO MINUTES ETC AFTER THE MEETING**

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Executive excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information.
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### **8.1 List of background papers**

The proper officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or any important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of Executive reports, the advice of a political advisor.

## **8.2 Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## **9. SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at County Hall.

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

### **10.1 Confidential information – requirement to exclude public**

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

### **10.2 Exempt Information – discretion to exclude public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

### **10.3 Meaning of confidential information**

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

### **10.4 Meaning of exempt information**

Exempt information means information falling within the following 7 categories (subject to any condition) if, and so long as, in all the

circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information:

Category		Condition
1	Information relating to any individual.	
2	Information which is likely to reveal the identity of an individual.	
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	<p>Information is not exempt information if it is required to be registered under:</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 1985;</li> <li>(b) the Friendly Societies Act 1974</li> <li>(c) the Friendly Societies Act 1992</li> <li>(d) The Industrial and Provident Societies Acts 1965 to 1978</li> <li>(e) the Building Societies Act 1986; or</li> <li>(f) the Charities Act 1993</li> </ul> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities.</p>
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.	<p>“Labour relations matters” are any matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ie matters which may be the subject of a trade dispute or any dispute about any of those matters.</p> <p>For the purposes of this paragraph this shall apply to office-holders under the authority as it applies in relation to employees of the authority.</p>
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6	<p>Information which reveals that the authority proposes:</p> <ul style="list-style-type: none"> <li>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(b) to make any order or direction under any enactment.</li> </ul>	
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	

Information falling within any of paragraphs 1 to 7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and County Planning General Regulations 1992.

In all cases the Monitoring Officer shall determine whether the public interest as set out above is satisfied.

#### **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Director of Legal Services thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

#### **12. APPLICATION OF RULES TO THE EXECUTIVE**

Rules 13-24 apply to the Executive and its committees. If the Executive or its committees meet to take a key decision then it must also comply with Rules 1-11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 13 of this Constitution.

If the Executive or its committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, then it must also comply with Rules 1-11 unless rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 13 of this Constitution. This requirement does not include meetings whose sole purpose is for officers to brief members.

#### **13. PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a forward plan) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the forward plan; and

- (c) where the decision is to be taken at a meeting of the Executive or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

## **14. THE FORWARD PLAN**

### **14.1 Period of forward plan**

Forward plans will be prepared by the Executive to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

### **14.2 Contents of forward plan**

The forward plan will contain matters which the Executive has reason to believe will be subject of a key decision to be taken by the Executive, a committee of the Executive, individual members of the Executive, officers, area committees or under joint arrangements in the course of the discharge of an Executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and

- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

The forward plan must be published at least 14 days before the start of the period covered. The Director of Legal Services will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that key decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on this disclosure, copies of, or extracts from, any documents listed in the forward plan are available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a forward plan and confidential information cannot be included.

## 15. **GENERAL EXCEPTION**

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;
- (b) the Director of Legal Services has informed the chairman of a relevant Improvement and Scrutiny Committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made;
- (c) the Director of Legal Services has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Director of Legal Services complied with (b) and (c).

Where such a decision is taken collectively, it must be taken in public.

## 16. **SPECIAL URGENCY**

If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chairman of the body making the decision, obtains the agreement of the chairman of a relevant Improvement and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no chairman of a relevant Improvement and Scrutiny Committee, or if the chairman of each relevant Improvement and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice Chairman will suffice.

## **17. REPORT TO COUNCIL**

### **17.1 When an Improvement and Scrutiny Committee can require a report**

If an Improvement and Scrutiny Committee thinks that a key decision has been taken which was not:

- (a) included in the forward plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with a relevant Improvement and Scrutiny Committee chairman, or the Chairman or Vice Chairman of the Council under Rule 16.

the committee may require the Executive to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the committee, but is also delegated to the proper officer, who shall require such a report on behalf of the committee when so requested by the chairman or any 5 members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Improvement and Scrutiny Committee.

### **17.2 Executive's report to Council**

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Executive is of the opinion that it was not a key decision the reasons for that opinion.

### **17.3 Quarterly reports on special urgency decisions**

In any event, the Executive will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

**18. RECORD OF DECISIONS**

After any meeting of the Executive or any of its committees, whether held in public or private, the Director of Legal Services or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

**19. EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

The Executive will decide whether meetings relating to matters which are not key decisions will be held in public or private.

**20. NOTICE OF MEETING OF THE EXECUTIVE**

Members of the Executive or its committees will be entitled to receive five clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

**21. ATTENDANCE AT MEETINGS OF THE EXECUTIVE**

**EXECUTIVE MEMBERS**

All members of the Executive will be served notice of all meetings of committees of the Executive, whether or not they are members of that committee.

**OFFICERS**

- (a) The Head of the Paid Service, the Chief Financial Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Executive and its committees. The Executive may not meet unless the Director of Legal Services has been given reasonable notice that a meeting is to take place.
- (b) Service Chief Officers, or their nominees, may attend meetings of the Executive or its sub-committees to provide advice on relevant issues.

## **22 IMPROVEMENT AND SCRUTINY COMMITTEE ACCESS TO DOCUMENTS**

### **22.1 Rights to Copies**

Subject to Rule 23.2 below, an Improvement and Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Executive or its committees – and which contains material relating to

- (a) any business transacted at a meeting of the Executive or its committees; or
- (b) any decision taken by an individual member of the Executive.

### **22.2 Limit on Rights**

An Improvement and Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or

## **23 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **23.1 Material relating to previous business**

All members will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business previously transacted at a private meeting unless (a) below applies

- (a) it contains exempt information falling within paragraphs 1 to 6, 9, 11, 12 and 14 of the categories of exempt information; or
- (b) it contains the advice of a political adviser.

### **23.2 Material relating to key decisions**

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession of, or under

the control of, the Executive or its committees which relates to any key decisions unless paragraph (a) above applies.

### **23.3 Nature of rights**

These rights of a member are additional to another right he/she may have.

# Budget and Policy Framework Procedure Rules

## 1. The framework for Executive decisions

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the Executive to implement it.

## 2. Process for developing the framework

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

- (a) The Executive will publicise a timetable for making proposals to the Council for the adoption of any plan, strategy or budget that forms part of the budget and policy framework, and its arrangements for consultation after publication of those initial proposals. The chairman of the appropriate Improvement and Scrutiny Committee will also be notified. The consultation period shall in each instance be not less than 6 weeks.
- (b) At the end of that period, the Executive will then draw up firm proposals having regard to the responses to that consultation. If a relevant Improvement and Scrutiny Committee wishes to respond to the Executive in that consultation process then it may do so. As the Improvement and Scrutiny Committee have responsibility for fixing their own work programme, it is open to the Improvement and Scrutiny Committee to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Executive will take any response from an Improvement and Scrutiny Committee into account in drawing up firm proposals for submission to the Council, and its report to Council will reflect the comments made by consultees and the Executive's response.
- (c) Once the Executive has approved the firm proposals, the Chief Executive will refer them at the earliest opportunity to the Council for decision.

- (d) In reaching a decision, the Council may adopt the Executive's proposals, amend them, or if it has objections refer them back to the Executive for further consideration as provided for in paragraph (k) or (l) below.
- (e) If it accepts the recommendation of the Executive without amendment, the Council may make a decision which has immediate effect. Otherwise, it may only make a decision in principle. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting.
- (f) The decision will be publicised in accordance with Article 4 and a copy shall be given to the Members.
- (g) The decision will automatically become effective 5 days from the date of the Council's decision, unless the Leader informs the proper officer in writing within 5 days that he/she objects to the decision becoming effective and provides reasons why.
- (h) In that case, the Director of Legal Services will call a Council meeting within a further 10 days. The Council will be required to re-consider its decision and the written submission.

The Council may

- (i) approve the Executive's recommendation by a simple majority of votes cast at the meeting; or
  - (ii) approve a different decision which does not accord with the recommendation of the Executive by a simple majority.
- (i) The decision shall then be made public in accordance with Article 4, and shall be implemented immediately;
  - (j) In approving the budget and policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the Executive, in accordance with paragraphs 5 and 6 of these Rules (virement and in-year adjustments). Any other changes to the policy and budgetary framework are reserved to the Council.
  - (k) Where the Executive has submitted a draft plan or strategy to the Council for its consideration, and following consideration of that

draft plan or strategy, the Council has any objection to it, the Authority must take the action set out in paragraph 3 of the Standing Order Regulations.

- (l) Where, before 8<sup>th</sup> February in any financial year, the Executive submits to the Council for its consideration in relation to the following financial year –
  - (i) estimates of the amounts to be aggregated in making a calculation (where originally or by way of substitute) in accordance with any of sections 32-37 or 43-49, of the Local Government Finance Act 1992;
  - (ii) estimates of other amounts to be used for the purposes of such a calculation;
  - (iii) estimates of such a calculation; or
  - (iv) amounts required to be stated in a precept under Chapter IV of I of the Local Government Finance Act 1992,

and following consideration of those estimates or amounts, the Council has any objections to them, it must follow the procedure in paragraph 7 to 10 of the Standing Order Regulations.

**Note:** The Standing Order Regulations are the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001 No 3384) and the Chief Executive is the “proper officer” for the purposes of those regulations.

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

- (a) Subject to the provisions of paragraph 5 (virement), the Executive, committee of the Executive, individual members of the Executive and any officers, area committees or joint arrangements discharging executive functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary or not only in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to 4. below.

- (b) If the Executive, committee of the executive, individual members of the Executive and any officers, area committee or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the Monitoring Officer and/or the Chief Financial Officer as to whether the decision they want to make would be contrary to the policy framework or contrary to, or not wholly in accordance with, the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.

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

- (a) The Executive, a committee of the Executive, and individual member of the Executive or officers, area committees or joint arrangements discharging executive functions may take a decision which is contrary to the Council's policy framework or contrary to, or not wholly in accordance with, the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:
  - (i) if it is not practical to convene a quorate meeting of the full Council; and
  - (ii) if the chairman of a relevant Improvement and Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of full Council and the chairman of the relevant Improvement and Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the chairman of a relevant Improvement and Scrutiny Committee, the consent of the Chairman of the Council or, in the absence of both, the Vice Chairman will be sufficient.

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

## **5. Virement**

- (a) Steps taken by the Executive, a committee of the Executive, an individual member of the Executive or officers, area committees or joint arrangements discharging executive functions to implement Council policy shall not exceed those budgets allocated to each budget head. However, such bodies or individuals shall be entitled to vire up to £50,000 across budget heads. Beyond that limit, approval to any virement across budget heads shall require the approval of full Council.

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

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

- (a) which will result in the closure or discontinuance of a service or part of a service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;
- (c) in relation to the policy framework in respect of a policy which would normally be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter under consideration;
- (d) which relate to policy in relation to schools where the majority of school governing bodies agree with the proposed change.

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

- (a) Where an Improvement and Scrutiny Committee is of the opinion that an executive decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Financial Officer.

- (b) In respect of functions which are the responsibility of the Executive, the Monitoring Officer's report and/or Chief Finance Officer's report shall be to the Executive with a copy of every member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet to decide what action to take in respect of the Monitoring Officer's report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that a decision was a departure, and to the Improvement and Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.
  
- (c) If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Financial Officer is that the decision is, or would be, contrary to the policy framework or contrary to, or not wholly in accordance with the budget, the Improvement and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 10 days of the request by the Improvement and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or Chief Finance Officer. The Council may either;
  - (i) endorse a decision or proposal of the executive decision-taker as falling within the existing budget and policy framework. In this case no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (ii) amend the Council's financial regulations or policy concern to encompass the decision or proposal of the body or individual responsible for that executive function and agree to the decision with immediate effect. In this case no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
  - (iii) where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to, or not wholly in accordance with, the budget, and does not amend the existing framework to accommodate it, require the Executive

to reconsider the matter in accordance with the advice of either the Monitoring Officer/Chief Finance Officer.

# Executive Procedure Rules

## 1. How does the Executive operate?

### 1.1 Who may make executive decisions?

The arrangements for the discharge of executive functions may be set out in the executive arrangements adopted by the Council. If they are not set out there, then the Leader or Cabinet may decide how they are to be exercised. In either case, the arrangements or the Leader may provide for executive functions to be discharged by:

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

In the absence of a Cabinet Member the Leader or Deputy Leader may discharge executive functions falling within that Cabinet Member's area of responsibility

### 1.2 Delegation by the Leader

At the annual meeting of the Council, the Council will approve a written record of delegations to be included in the Council's scheme of delegation at Part 3 to this Constitution. The Council will make available the following information about executive functions in relation to the coming year:

- i) the names, addresses and electoral divisions of the people appointed to the Executive by the Council;
- ii) the extent of any authority delegated to Executive members individually, including details of the limitation on their authority;
- iii) the terms of reference and constitution of such Executive committees as are appointed and the names of Executive members appointed to them;

- iv) the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements and the names of those Executive members appointed to any joint committee for the coming year; and

### **1.3 Sub-delegation of executive functions**

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

### **1.4 The Council's scheme of delegation and executive functions**

- (a) Subject to (b) below the Council's scheme of delegation 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 be set out in Part 3 of this Constitution.
- (b) If the Executive is able to decide whether to delegate executive functions, it may amend the scheme of delegation relating to executive functions at any time during the year. To do so, the Executive must give written notice to the Director of Legal Services and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the Executive as a whole. The Director of Legal Services will present a report to the next ordinary meeting of the Council setting out the changes made by the Executive.

- (c) Where the Leader seeks to withdraw delegation from a cabinet committee of the Executive, notice will be deemed to be served on that committee when he/she has served it on its chairman.

#### **1.5 Conflicts of Interest**

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- (b) If every member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- (c) If the exercise of an executive function has been delegated to a committee of the Executive, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Code of Conduct for Members referred to in Part 5 of this Constitution.

#### **1.6 Executive meetings – when and where?**

The Executive will normally meet on a three weekly basis, or at such times deemed appropriate by the Leader, at times to be agreed by the Leader. The Executive shall normally meet at the Council's main offices or another location to be agreed by the Leader.

#### **1.7 Public or private meetings of the Executive?**

The Executive will be open to the public, subject to confidentiality rules.

#### **1.8 Quorum**

The quorum for a meeting of the Executive shall be 5 including the Leader or Deputy Leader.

#### **1.9 How are decisions to be taken by the Executive?**

- (a) Executive decisions which have been delegated to the Executive as a whole will be taken at a meeting convened in accordance with the Access to Information rules in Part 4 of the Constitution.

- (b) Where Executive decisions are delegated to a committee of the Executive, the rules applying to Executive decisions taken by them shall be the same as those applying to those taken by the Executive as a whole.

## **2. HOW ARE EXECUTIVE MEETINGS CONDUCTED?**

### **2.1 Who presides?**

The Leader, or in his/her absence, the Deputy Leader.

### **2.2 What business?**

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

- i) consideration of the minutes of the last meeting;
- ii) declarations of interest, if any;
- iii) matters referred to the Executive (whether by an Improvement and Scrutiny Committee or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Improvement and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- v) matters set out in the agenda for the meeting, (and which shall indicate which are not in accordance with the Access to Information Procedure rules set out in Part 4 of this Constitution)
- iv) consideration of reports from an Improvement and Scrutiny Committee;

### **2.3 Consultation**

All reports to the Executive from any member of the Executive or an officer on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and relevant Improvement and Scrutiny Committee, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation

required will be appropriate to the nature of the matter under consideration.

#### **2.4 Who can propose items for the Executive agenda?**

- Any member of the Executive
- Chief Executive (Head of Paid Service); Director of Finance (Chief Financial Officer); Director of Legal Services (Monitoring Officer)
- Service Chief Officers
- Requests from any Member of the Council

# Improvement and Scrutiny Procedure Rules

## 1. **What will be the number and arrangements for Improvement and Scrutiny Committees?**

The Council will have three Improvement and Scrutiny Committees, their size to be determined at the Annual Meeting of the Council, and terms of reference as set out in Article 6. Such Committees may appoint Sub-Committees or Panels as they consider appropriate.

## 2. **Who may sit on Improvement and Scrutiny Committees?**

All Councillors except members of the Cabinet may be members of an Improvement and Scrutiny Committee. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

## 3. **Education Representatives and Co-optees**

The Services for Children Improvement and Scrutiny Committee will include in its membership the following representatives with voting rights:

- (a) One Church of England diocese representative;
- (b) One Roman Catholic diocese representative;
- (c) Two parent governor representatives; and

Where the Committee is dealing with matters other than education, these representatives shall not vote but may stay in the meeting and speak.

Each Improvement and Scrutiny Committee, or sub-committee shall be entitled to appoint other non-voting co-opted members to assist in carrying out their work as they consider appropriate.

## 4. **Meetings of the Improvement and Scrutiny Committees**

Each Improvement and Scrutiny Committee will meet in accordance with a timetable of meetings approved by the Council. Normally each Committee will meet bi-monthly but may be called from time to time as and when appropriate. A meeting may also be called by the chairman of

the relevant Improvement and Scrutiny Committee, or if requisitioned by one third of the number of members of the Committee (rounded up).

**5. Quorum**

The quorum for an Improvement and Scrutiny Committee shall be one quarter of the number of members of the committee (rounded up).

**6. Who Chairs Improvement and Scrutiny Committee Meetings?**

Chairmen of Improvement and Scrutiny Committees/Sub-Committees will be drawn from among the Councillors sitting on the Committee/Sub-Committee, and subject to this requirement the Committee/Sub-Committee may appoint such person as it considers appropriate as Chair.

**7. Work Programme**

Each Improvement and Scrutiny Committee will be responsible for setting their own work programme and in doing so shall take account of the wishes of the members of the Committee. The work programme should include matters on which there are requests from the Council or the Cabinet for advice.

**8. Agenda Items**

Any member of an Improvement and Scrutiny Committee shall be entitled to give notice to the Director of Legal Services that he/she wishes an item, relevant to the functions of the Committee, to be included on the agenda for the next available meeting of the Committee. On receipt of such a request the Director of Legal Services will ensure that it is included on the next available agenda. Members who are not appointed to the Improvement and Scrutiny Committee in question may ask their party group spokesman to give notice of an item.

Improvement and Scrutiny Committees shall also respond, as soon as their work programme permits, to requests from the Council, and if it considers it appropriate the Cabinet, to review particular areas of Council activity. Where they do so, the Committees shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or the Cabinet shall consider the report of the Improvement and Scrutiny Committee at their next available meeting.

## **9. Policy and Project Reviews**

- (1) The role of the Improvement and Scrutiny Committees in relation to the development of the Council's budget and policy and framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- (2) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Improvement and Scrutiny Committees may make proposals to the Cabinet and/or Council relating to matters within their terms of reference.
- (3) Improvement and Scrutiny Committees may hold inquiries and investigate the available options for future direction in policy development and may appoint advisers to assist them in this process. They may go on site visits, conduct surveys, hold public meetings, commission research and do other things that are reasonably considered necessary to inform their deliberations. They may ask witnesses to attend a meeting on matters under consideration and, if appropriate, pay advisers and witnesses a reasonable fee and expenses for doing so.

## **10. Reports from Improvement and Scrutiny Committee**

- (1) Once it has formed recommendations on proposals, the Improvement and Scrutiny Committee will prepare a formal report and submit it either to the Cabinet or to the Council as the Committee thinks appropriate.
- (2) If one single final report cannot be agreed, then a minority report may be prepared and submitted alongside the majority report.
- (3) The Cabinet or Council will receive the final scrutiny report and respond usually within two months confirming acceptance or otherwise of the report's recommendation and an action plan for implementation.

## **11. Rights to documents**

- (1) Members of Improvement and Scrutiny Committees have the rights to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this

Constitution. Members will also be informed of the Council's forward plan of key decisions; and of executive decisions of the Council, Cabinet and Committees.

- (2) Nothing in this paragraph prevents more detailed liaison between the Cabinet and Improvement and Scrutiny Committees as appropriate depending on the particular matter under consideration.

## 12. **Attendance at Improvement and Scrutiny Committees**

- (1) An Improvement and Scrutiny Committee may scrutinise and review decisions made or actions taken or proposed to be taken in connection with the discharge of the Council's functions. As well as reviewing documentation, in fulfilling its Improvement and Scrutiny role, it may request any member with Executive responsibilities, senior officer of the Council, or other person to attend and provide information within their remit on:

- Measures to improve the implementation of Council policies
- Any particular decision or series of decisions;
- The extent to which actions taken implement Council policy
- Service performance

The overriding intention is to seek improvements in the delivery of Council's services.

- (2) Where the response to any question or request for information would disclose confidential or exempt information within the meaning of Schedule 12A of the Local Government Act 1972, the Committee shall be so advised by the member or officer and the chairman shall move that the answer is taken in confidential session and the question shall be put without being seconded or debate. No member or officer giving evidence to an Improvement and Scrutiny Committee shall be under any obligation to disclose publicly personal information about an individual employee, child in care or at school, or any recipient of Council services.
- (3) An Improvement and Scrutiny Committee may invite people other than members or officers to discuss issues of local concern and/or answer questions. It may, for example, wish to hear from residents, service users and representatives from other public sector organisations.

### 13. Call-in

Call-in should only be used in exceptional circumstances. These are where members have evidence which suggests that issues have not been handled in accordance with the decision-making principles set out in Article 13 (decision-making).

- (1) When a decision is made by the Executive, an individual member of the Executive, a Committee of the Executive, or a key decision is made by an officer with delegated authority from the Executive, or under joint arrangements the decision shall be published, including where possible by electronic means and shall be available at the main offices of the Council, normally within one week of the decision being made.

All members will be informed of the decision made.

- (2) Notice of the decision will bear the date upon which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless four Councillors, including two Councillors from at least two political groups give notice to the Director of Legal Services requesting a call-in of that decision.
- (3) The Director of Legal Services upon receiving a request for the call-in of a decision shall notify the decision taker of the call-in and inform the appropriate chairman of the Improvement and Scrutiny Committee. A meeting of the appropriate Improvement and Scrutiny Committee will then consider the requisitioned call-in decision at its next available meeting.
- (4) If, having considered the decision, the Improvement and Scrutiny Committee is still concerned about it, it may then refer it back to the decision-making person or body for reconsideration setting out in writing the nature of the concerns or refer the matter to full Council. If the Improvement and Scrutiny Committee has no objection to the decision, those requesting the call-in shall be so informed and the decision implemented.
- (5) If the matter was referred to full Council and the Council does not object to a decision which has been made then the decision will be effective. However, if the Council does object and the decision is

within its terms of reference the decision will be amended according to the Council's wishes. In those cases where the Council does object and has no locus to make decisions in respect of Executive decisions, the Council will refer any decision to which it objects back to the decision-making person or body together with the Council's views on the decision. That decision-making body or person shall choose whether to amend the decision or not, before reaching a final decision and implementing it.

### **Call-in and Urgency**

- (6) The call-in procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public interest. All reports recommending that decisions be taken should say whether or not it is proposed that call-in be waived. The record of the decision, and notice by which it is made public, shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The chairman of the appropriate Improvement and Scrutiny Committee should agree both the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. Decisions taken as a matter of urgency should be reported to the next available meeting of the Council, together with the reasons for urgency.
- (7) The operation of the provisions in relation to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

## **14. Procedure at Improvement and Scrutiny Committee Meetings**

- (1) Improvement and Scrutiny Committees shall consider the following business:
  - (a) Minutes of the last meeting.
  - (b) Consideration of any matter referred to the Committee for a decision in relation to call-in for a decision.
  - (c) Responses of the Executive or Council to reports of the Improvement and Scrutiny Committee.

- (d) Business as otherwise set out in the agenda.
  - (2) Where Improvement and Scrutiny Committees conduct investigations and reviews, the Committees may also ask people to attend to give evidence at meetings which are to be conducted in accordance with the following principles:
    - (a) That the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak.
    - (b) That those assisting the Committee by giving evidence be treated with respect and courtesy and see that the investigation be conducted so as to maximize the efficiency of the investigation or analysis.
  - (3) Following any investigation or review the Committee shall prepare a report, for submission to the Cabinet and/or Council, as appropriate, and shall make its report and findings public.
15. **Matters within the remit of more than one Improvement and Scrutiny Committee**
- (1) Where an Improvement and Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Improvement and Scrutiny Committee, then the Committee conducting the review shall invite the chairman of the other Committee (or his/her nominee) to attend its meetings when the matter is being reviewed.
  - (2) To enable the work of the three Improvement and Scrutiny committees to be co-ordinated, monthly meetings of the chairmen will be held to discuss future work programmes and agree the allocation of project reviews to appropriate Committees.

16. **Councillor Call For Action**

Issues may be reported to an Improvement and Scrutiny Committee as a last resort under the Guide for Derbyshire County Councillors or Councillor Call for Action (February 2009).

## **Financial Procedure Rules**

Financial Regulations are available as a separate document and can be accessed via the County Council's website: [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk)

# Standing Orders Relating to Contracts

## D STANDING ORDERS RELATING TO CONTRACTS

### PART I      [Application and Exemption](#)

SO1	Application
SO2	Exemption

### PART II      [Content of Contracts](#)

SO3	Contract Conditions
-----	---------------------

### PART III      [Competition](#)

SO4	Invitation of Tenders
SO5	Selective Tendering
SO6	Open Tendering
SO7	Submission and Opening of Tenders
SO8	Acceptance of Tenders
SO9	Alteration of Tenders
SOPTN	Post Tender Negotiations
SOCD	Competitive Dialogue

### PART IV      [Interpretation](#)

SO10	Interpretation
------	----------------

### PART V      [Contracts for the Provision of Passenger Transport Services](#)

SO11	General Conditions
------	--------------------

### PART VI      [Financial Vetting](#)

SO12	Financial Vetting of Contractors
------	----------------------------------

### APPENDIX [Clause Concerning Corruption](#)

#### PART I – APPLICATION AND EXEMPTION

**SO1 Application** Every contract made by or on behalf of the Council shall comply with the law of England, these Standing Orders, the Council's Financial Regulations, the EC Treaty and with any relevant Directives of the EC.

**SO2 Exemption** Any requirement of these Standing Orders may be waived by the Council, Cabinet or Cabinet Member only where they are satisfied that there are special circumstances justifying exemption and such exemption shall be recorded in the Minutes.

## **PART II CONTENT OF CONTRACTS**

### **SO3 Contract Conditions**

(1) Every contract shall be:

- (a) (i) in writing in a form approved by the Director of Legal Services  
(ii) executed under seal when required by the Director of Legal Services
- (b) specify the subject matter, price (and any discount or deduction), contract period and such other terms as are agreed
- (c) contain a clause permitting cancellation in circumstances of corruption, such clause having the same effect as that set out in the Appendix - Clause Concerning Corruption.
- (d) require compliance with any appropriate British Standard Specification or Code of Practice or other equal and approved European standard
- (e) indemnify the Council against any claim which may be made in respect of personal injury to any person unless due to the negligence of the Council and against any claim for damage to property due to the negligence of the contractor and the contractor shall when required produce satisfactory evidence that he/she is insured against such claims
- (f) include the following clause:- "the award of this contract shall not entitle the contractor to endorse its products by reference in any way to the Derbyshire County Council nor shall the contractor exhibit or display for advertisement or otherwise any goods, equipment or vehicles to be supplied under the contract to the Council and which can be identified with the Council (whether the property in such goods, equipment or vehicles shall have passed to the Council or not) without the written consent of the Council"

(2) Where, following consultation with the Director of Legal Services and Director of Finance, it is considered appropriate a contract shall:

- (a) contain a clause requiring payment of liquidated damages if the contractor fails to complete the contract in time

(b) be supported by sufficient security for due performance.

## **PART III COMPETITION**

### **SO4 Invitation of Tenders**

- (1) Where the estimated value or amount of a proposed contract/sub contract exceeds £50,000 tenders shall be invited from firms on lists compiled under the selective tendering procedure in accordance with the procedure set out in Standing Order 5 or by public notice in accordance with the open tendering procedure set out in Standing Order 6.
- (2) For the purposes of this Standing Order a proposed contract includes any series of contracts:
  - (a) awarded under an annual or periodic standing arrangement with one firm, or
  - (b) which should reasonably be treated as one contract.
- (3) Where the estimated value of a proposed contract does not exceed £50,000 alternative quotations shall be invited from at least three firms considered competent to perform the contract, in addition to any in-house bid. Officers will be required to include, where possible/appropriate, Derbyshire suppliers within their range of bidders. Where the Strategic Director considers that this is impractical, arrangements for inviting tenders or negotiating contracts under competitive conditions shall be in accordance with procedures agreed with the Director of Finance.
- (4) Where no Corporate contract exists quotations and tenders over £25,000 will be required to be advertized on Source Derbyshire.
- (5) Where works can only be performed by one specialist firm or are required urgently, they shall be regarded as exempt from this Standing Order but the making of the contract shall be reported to Cabinet Member.

### **SO5 Selective Tendering**

- (1) For the purposes of this Standing Order:
  - (a) a Standing List is a list of firms considered technically competent and financially able (refer to SO12) to perform contracts of the types and values specified in the list, such competence and ability to be reviewed at least every five years.

- (b) a Select List is a list compiled for specific proposed works after at least four weeks public notice has been published specifying details of those works and inviting applications for inclusion.
  - (c) a Specialist List is a list of firms which the Strategic Director considers competent to provide specialist goods or services.
- (2) Tenders shall be invited from not fewer than three firms included on the appropriate Standing, Select or Specialist List of Approved Contractors, in addition to any in-house bid.
  - (3) The selection of firms invited to tender shall be made by the automatic rotation of Suppliers on the standing list as approved by Members. Any other method of selection of tenderers requires the approval of the relevant Cabinet Member.
  - (4) Any list shall contain the name and address of each firm approved for a contract or type of contract and, in the case of contracts for the execution of work, any maximum value of contract for which that firm may be invited to tender.

### **SO6 Open Tendering by Public Notice**

Tenders shall be invited by giving at least 10 days prior, public notice. The notice shall express the nature and purpose of the contract, state where further details may be obtained, and state the last date and time when tenders will be received. The notice shall be posted on the Source Derbyshire Website and any other appropriate media.

### **SO7 Submission and Opening of Tenders**

- (1) An invitation to tender shall state clearly the closing date and time for receipt of tenders and that:
  - (a) the Council do not bind themselves to accept the lowest or any tender
  - (b) no tender will be accepted unless it is enclosed in the special envelope (bearing the distinctive label supplied with the tender form) properly sealed and addressed to the Chief Executive and either sent by post or delivered by hand to the Chief Executive's Office, or has been sent electronically using the Council's approved e-tendering procedures.

- (c) proof of posting will not be accepted as proof of delivery if the tender fails to arrive at the address shown on the tender envelope label before the closing date and time.
- (2) No tender received after the closing date and time shall be considered. (Any such tender will be returned to the tenderer by the Chief Executive).
  - (3) Tenders shall be kept in the custody of the Chief Executive or within the secure area of the Council's e-tendering system until the time and date specified for their opening.
  - (4) Opening of Tenders will follow the following protocol(s)
    - (a) where only written (hard copy) tenders are received the tenders shall be opened at one time, which shall be as soon as possible after the closing time, and only in the presence of three officers appointed by the Chief Executive. Those officers shall certify a list of tenders received.
    - (b) where tenders are received solely through the Authority's approved e-tendering system, they are subject to the electronic security protocols within that system which require tenders to be opened electronically by a designated group of officers.
    - (c) where both electronic and hard copy tenders are submitted for the same contract, all tenders received by both means must be brought together for formal tender opening at one time, and ALL tenders received must be recorded on a list certified by the Tender Opening Panel members.
  - (5) The Chief Executive may nominate another officer to discharge his responsibilities under this Standing Order.

### **SO8 Acceptance of Tenders**

- (1) Where tenders have been received in accordance with Standing Order 7 the Strategic Director may accept a tender where it is within the limit of the approved estimate. Where the value of the tender is up to 25% higher than the approved estimate or £50,000, whichever is the lower, and is capable of being contained within the overall programme budget, the acceptance of the tender may be approved by the relevant Cabinet Member. Above these limits Cabinet approval is required. If payment is to be received by the Council, the reference is to the highest tender.

- (2) A list of tenders received identifying the tender accepted shall be reported each quarter to the relevant Cabinet Member.

### **SO9 Alteration of Tenders**

Once opened tenders shall not be altered except that a tenderer may be given an opportunity to have an error in calculation corrected. When such an opportunity is given, the tenderer shall be given no information about other tenders or the likelihood of his tender being accepted.

### **SOPTN Post-Tender Negotiations**

- (1) Post-Tender Negotiations will only be undertaken in exceptional circumstances, where the law allows and in consultation with the relevant Strategic Director, Director of Legal Services and County Procurement Officer. It is essential that such negotiations are conducted professionally and with demonstrable probity.
- (2) Post-Tender Negotiation takes place after the formal receipt of tenders and before the formal award of contracts. Its purpose is to secure some improvement in price, delivery or quality. It is a quite different process from that of clarifying points with tenderers about aspects of their bids. It also differs from claim negotiations with contractors.
- (3) Before engaging in Post-Tender Negotiation, the following criteria must be met:
  - (a) there must be a considered and soundly based prospect of improving value for money
  - (b) it must be possible to justify the resource costs
  - (c) it must be subject to senior management's prior approval
  - (d) trained and experienced purchasing officers must conduct negotiations
  - (e) negotiations must be fully documented, so that a clear audit trail is left.
- (4) The use of Post Tender Negotiation must be justified and shown to have been conducted in a fair manner. The relevant contract files etc should clearly show the:
  - (a) justification for the use of Post Tender Negotiation
  - (b) approval for Post Tender Negotiation
  - (c) aim of the negotiations

- (d) methods used
- (e) precise record of all exchanges, written and verbal, including officers involved
- (f) management approval for the award of contract.

### **S OCD Competitive Dialogue**

- (1) Competitive dialogue is used in the award of complex contracts, where there is a need for the Authority to discuss all aspects of the proposed contract with potential suppliers and such dialogue is not possible under open or restricted procedures.
- (2) European Commission Directive 2004/18/EC sets out that contracts can be considered as particularly complex where contracting authorities:-
  - (a) are not objectively able to define the technical means capable of satisfying their needs or objectives and/or
  - (b) are not objectively able to specify the legal and/or financial make-up of a project.
- (3) Competitive dialogue should only be undertaken where the Authority undertakes a particularly complex project and it is objectively impossible to define the means of satisfying the needs or of assessing what the market can offer in the way of technical solutions and/or financial/legal solutions through existing procedures.
- (4) The following protocols should be followed prior to and during the competitive dialogue process:-
  - (a) the project must be suitably complex to justify the use of competitive dialogue procedures
  - (b) the project must be subject to Member approval
  - (c) trained and experienced procurement officers should lead and conduct the dialogue process
  - (d) negotiations must be fully documented, so that a clear audit trail is maintained

### **PART IV Interpretation**

#### **SO10 Interpretation in the Standing Orders - the meaning of the following terms is as set out:**

"Contract"

- A. Means a contract for the execution of works or the supply of goods, materials or services.

"Firm"

B. Includes any company, partnership, co-operative or other business entity or person.

"Public Notice"

C. Means a notice published in at least one local newspaper, the Source Derbyshire Website, and, where appropriate, one trade newspaper or journal circulating among such firms who undertake such contracts, and "published" shall be interpreted accordingly.

## **PART V Contracts for the Provision of Passenger Transport Services**

### **SO11 General Conditions**

- (1) In respect of any contracts sought for the provision of passenger transport services by, or on behalf of, the County Council the requirements for Selective Tendering shall not apply and Standing Orders 4, 5, and 8 are hereby excluded.
- (2) In respect of any contract for the provision of passenger transport services, the following should apply:

#### **(a) Invitation of Tenders**

- (i) Where a contract requires a public service vehicle, ambulance or hackney carriage (it if is operating as a local service) tenders shall be invited for a register of operators by public notice in accordance with the open tendering procedure detailed in Standing Order 6 and shall be on such terms and conditions as are set out in the County Council's Public Transport Policies and Standards document, as approved.
- (ii) Where a private hire car is required for the carrying of non-fare paying passengers, an invitation to tender shall be sought from at least 3 operators on the standing list.

#### **(b) Tender Acceptance**

- (i) Where tenders have been received in accordance with Standing Order 12(2)(a) the tender may be accepted by the Cabinet Member on advice of Strategic Director where the tender value is £15,000 or more in a full year or by the Strategic Director of Environmental Services where the value of the contract is less.
- (ii) Private hire agreements for private hire work for non repetitive journeys made by schools and other County Council establishments are not within the provisions of the Standing Order, but are otherwise subject to all other Standing Orders and regulations of the County Council.
- (iii) For the purposes of this Standing Order:
  - (a) The Register of Operators is the list of persons who have notified the County Council that they wish to receive tender invitations appropriate to the service being sought.
  - (b) The Standing List is the list of licensed private hire car operators, or in those areas of the County Council where licensing is not applied, those firms approved by the Public Transport Officer.

## **PART VI Financial Vetting**

### **SO12**

The financial vetting of contractors is an integral part of the procurement process and is designed to ensure that the contractor is financially able to perform the requirements imposed by the contract. In the context of this process, financial vetting

should form part of the selection (not award) criteria and is designed to identify financial risks to be assessed alongside other qualitative and quantitative factors that can be grounds for selecting a preferred supplier. The financial vetting procedure is the responsibility of the Director of Finance, and is distinct from the technical vetting of contractors which is the responsibility of appropriate technical and professional officers.

## **APPENDIX**

### **Clause Concerning Corruption**

If the contractor shall have offered or have given, or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any action in relation to the obtaining or execution of this contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation thereto, or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor) or if in relation to any contract with the Council the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972 the Council shall be entitled to cancel this contract and to recover from the contractor the amount of any loss resulting from such cancellation.

# Officer Employment Procedure Rules

## 1. Recruitment and Appointment

### (a) Declarations

- i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.
- ii) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

### (b) Seeking support for appointment.

- i) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- ii) No Councillor will seek support for any person for any appointment with the Council.

## 2. Recruitment of Head of Paid Service and chief officers

Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will;

### (a) draw up a statement specifying:

- i) the duties of the officer concerned; and
- ii) any qualifications or qualities to be sought in the person to be appointed;

- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

3. **Appointment of Head of Paid Service**

- (a) The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a committee or sub-committee of the Council. That committee or sub-committee must include at least one member of the Cabinet.
- (b) The full Council may only make or approve the appointment of the head of paid service where no well-founded objection has been made by any member of the executive.

4. **Appointment of chief officers and officers reporting directly to chief officers**

- (a) A committee or sub-committee of the Council will appoint chief officers and officers reporting directly to chief officers. That committee or sub-committee must include at least one member of the Cabinet.
- (b) An offer of employment as a chief officer or other officer reporting directly to a chief officer shall only be made where no well-founded objection from any member of the executive has been received.

5. **Other appointments**

- (a) **Officers other than those covered by paragraph 4 above.** Appointment of these officers (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.
- (b) **Assistants to Political Groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

## 6. **Disciplinary Action**

- (a) **Suspension.** The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.
- (b) **Independent person.** No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person.
- (c) **Objections** If dismissal of any of those officers is proposed the dismissal must operate the procedure set out in regulation 6 of the Standing Order Regulations.

## 7. **Dismissal**

Except as provided for in respect of the Chief Executive, chief officers and officers reporting directly to chief officers, Councillors will not be involved in the dismissal of any officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, although the Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of dismissals.

**NOTE:** The Standing Order Regulations are the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001 No 3384), and the Director of Human Resources is the "Proper Officer" for the purposes of those regulations.

# **Part 5**

## **Codes and Protocols**

## **DERBYSHIRE COUNTY COUNCIL**

### **CODE OF CONDUCT FOR MEMBERS**

This Code is a guide for elected members of Derbyshire County Council, and all co-opted members of Committees who have voting rights to those bodies. It was adopted by the County Council from 1 July 2007. The Code is the model recommended by the Standards Board for England.

The Code represents the standard against which the conduct of members will be judged, both by the public and by fellow Councillors. Any breach of the Code may result in a complaint to the Standards Board for England.

Councillors hold office by virtue of the law, and must at all times act within the law. You should make sure that you are familiar with the rules of personal conduct which the law and standing orders require and the guidance contained in this Code.

It is your responsibility to make sure that what you do complies with these requirements and this guidance. You should review your personal circumstances with this in mind particularly when your circumstances change. You should not at any time advocate or encourage anything to the contrary.

If in doubt seek advice from the Monitoring Officer or from your own legal adviser. In the end, however, the decision and responsibility are yours.

## **CONTENTS**

### **General Principles of Conduct**

#### **The Code of Conduct**

1. Introduction and Interpretation
2. Scope
3. General Obligations
4. Personal Interests
5. Disclosure of Personal Interests
6. Prejudicial Interests generally
7. Prejudicial interests arising in relation to Overview and Scrutiny Committees
8. Effect of prejudicial interest on participation
9. Registration of Members' interests
10. Sensitive information

## **CODE OF CONDUCT THE GENERAL PRINCIPLES OF CONDUCT**

1. **Selflessness**  
Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
2. **Honesty and Integrity**  
Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.
3. **Objectivity**  
Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
4. **Accountability**  
Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
5. **Openness**  
Members should be as open as possible about their actions and those of their Authority, and should be prepared to give reasons for those actions.
6. **Personal Judgement**  
Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
7. **Respect for Others**  
Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the Authority's statutory officers, and its other employees.
8. **Duty to Uphold the Law**  
Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

9. **Stewardship**

Members should do whatever they are able to do to ensure that their Authorities use their resources prudently, and in accordance with the law.

10. **Leadership**

Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

## THE DERBYSHIRE COUNTY COUNCIL CODE OF CONDUCT (Adopted from 1 July 2007)

### Part 1

#### General provisions

#### **Introduction and interpretation**

1. —(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

#### **Scope**

2. —(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

**3.**—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

**4. You must not—**

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

**5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.**

**6. You—**

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7.** —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Part 2

### Interests

#### **Personal interests**

**8.** —(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### **Disclosure of personal interests**

**9.** —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

### **Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that

business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

## **Prejudicial interests arising in relation to overview and scrutiny committees**

**11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

## **Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## Part 3

### Registration of Members' Interests

#### **Registration of members' interests**

**13.** —(1) Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

#### **Sensitive information**

**14.** —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

# Officers' Code of Conduct

## 1 Introduction

- 1.1 The public is entitled to expect the highest standards of conduct from all the County Council's employees. Your duty is to serve the Council in providing advice, implementing its policies and delivering services to the local community. In performing your duties, you must act with integrity, honesty, impartiality and objectivity.
- 1.2 The purpose of the Code is to assist you in carrying out your job by making clear the standards of behaviour the Council requires you to meet. It incorporates the existing laws, regulations and conditions of service you should be most aware of in your work for the Council.

## 2 Scope

- 2.1 The Code applies to all employees of the County Council and is recommended to those schools where the Governing Body performs the function of the employer. The Code also applies to contractors, agency staff, volunteers and those on student/work experience placements working on behalf of the Council.
- 2.2 You should read the Code in conjunction with professional standards, departmental requirements and guidance regarding standards of conduct in particular areas of work. Some of these additional sources of guidance are listed in the Appendix at the end of this Code. This list is not exhaustive and you should familiarise yourself with any relevant guidance which may be provided in relation to your particular area of work. You should address any further queries you have to your line manager or another senior manager in your department.

## 3 Accountability

- 3.1 As an employee, you are required to serve the whole of the Council and serve all Elected Members equally. You are accountable and owe a duty to the Council and you are expected, where it is a part of your duties, to provide appropriate advice to Elected Members and fellow employees with impartiality. You must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.
- 3.2 If you fail to comply with the Code's provisions, this may result in action under the Council's Disciplinary Procedure.

## **4 Maintenance of Standards**

- 4.1 You should inform your line manager if you identify any deficiency in service resulting from breaches of this Code. If you have concerns about raising the deficiency with your line manager, and wish to maintain confidentiality, you can use the Council's Confidential Reporting Code. In this case, you should inform your line manager or your Chief Officer or the County Secretary.
- 4.2 The Council's Customer Service Charter aims to assist you in delivering the Council's vision. You should be aware of what it requires of employees and it can be found on Dnet under Working for the Council – Customer Care.

## **5 Disclosure of Information**

- 5.1 The Council is committed to open government and to rights of public scrutiny and participation. Legislation, including the Freedom of Information Act 2000 and the Data Protection Act 1998, requires that certain types of information must be made available to the public and other recognised third parties and to employees and Elected Members. Advice and guidance on the requirements of the Freedom of Information and Data Protection Acts is available from the County Secretary's Division at County Hall.
- 5.2 You have a responsibility to safeguard the security and confidentiality of personal information you hold and you should ensure that only the appropriate amount of information required is provided to those who have a clearly established and legitimate need to use it. Advice and guidance on your existing statutory or common law obligations regarding confidentiality is also available from the County Secretary's Division at County Hall.
- 5.3 You should not use any information obtained in the course of your employment for personal gain or benefit, nor should you pass it on to others who might use it in such a way.

## **6 Political Neutrality**

- 6.1 Certain posts are designated politically restricted by the Local Government and Housing Act 1989. Your contract of employment will tell you whether you hold one of these posts and, if you do, you will be required by law to observe certain restrictions regarding your out of work activities. For example, you may not:
- Stand for election to local authorities (except Town or Parish Councils), the House of Commons or the European Parliament.
  - Hold office in a political party.
  - Canvass at elections, or
  - Speak or write publicly on matters on party political lines.

6.2 Whether or not politically restricted, you must follow the policies of Derbyshire County Council and must not allow your own personal or political opinions to interfere with your work.

6.3 As a part of your work, you may be required to advise political groups. You must do so in ways which do not compromise your political neutrality.

## **7 Relationships**

### **7.1 Elected Members**

7.1.1 Mutual respect between employees and Elected Members is essential to good local government and working relationships should be kept on a professional basis. Close personal familiarity between yourself and individual Elected Members can damage the relationship and prove embarrassing to other employees and Elected Members and should therefore be avoided.

### **7.2 The Local Community and Service Users and Other Employees**

7.2.1 You should always remember your responsibilities to the community you serve and ensure courteous, efficient and impartial service delivery to all service users, groups and individuals within that community, as set out in the Customer Service Charter and in line with the Council's vision of improving life for local people. These responsibilities apply equally to your conduct with fellow employees, contractors, agency staff, volunteers and those on student/work experience placements working on behalf of the Council.

### **7.3 Contractors**

7.3.1 If you engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, you should declare that relationship to your Chief Officer.

7.3.2 Orders and contracts must be awarded on merit, in accordance with Financial Regulations and Standing Orders in Relation to Contracts, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

7.3.3 As a private citizen, you should be aware of possible conflicts of interest when you buy goods or use the services of firms who have dealings with the Council and you should follow departmental procedures relating to the disclosure of any such transactions.

## **8 Equalities**

- 8.1 You must comply with the Council's Equal Opportunities Policy and legal requirements relating to equality issues. One of the Council's objectives is to promote equality of opportunity and prevent unlawful discrimination in all of its activities.

## **9 Appointment and other Employment Matters**

- 9.1 If you are involved in the appointment of employees, you should be aware that it is unlawful for you to make an appointment based on anything other than the ability of the candidate to undertake the duties of the post. To avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant or have a close association with the applicant.
- 9.2 You should not be involved in decisions relating to discipline, promotion or pay and conditions adjustments for another employee who is a relative or with whom you have a close association.

## **10 Taking Other Employment**

- 10.1 You should not undertake additional employment (paid or unpaid) – or allow your name to be put forward for consideration for such work - if your proposed additional work either will or has the potential to:
- Create a conflict of interest.
  - Overlap with official duties.
  - Make use of material to which you have access by virtue of your position.
  - Weaken public confidence in the Council.

Where you consider your proposed secondary employment may conflict with these requirements, you should inform your line manager who will advise you on whether you need to seek the agreement of your Chief Officer to your proposed additional employment.

## **11 Personal Interests**

- 11.1 Personal interests must not conflict with your public duty. An official position or information acquired in the course of your employment must not be used to further personal interests or for the interests of others.
- 11.2 You must declare to your Chief Officer any:

- Financial interest which could conflict with the Council's interests.
- Non-financial interest which could conflict with the Council's interests.
- Interest in an existing or proposed contract with the Council.
- Membership of any organisation which could conflict with the Council's interests.

11.3 You should make any such declaration in writing to your Chief Officer. Any such declaration by a Chief Officer should be made in writing to the Chief Executive.

## **12 Stewardship**

12.1 You must ensure that you use public funds entrusted to you in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the Council for personal use unless authorised in advance to do so. You should strive to ensure value for money to the local community and to avoid legal challenge to the County Council.

12.2 Personal Use of Internet and Email – any personal use must be in accordance with the Council's current Internet and Email Policy and Guidance and the related Frequently Asked Questions accessible on Dnet.

12.3 Personal Telephone Calls – Personal incoming and outgoing calls should occur infrequently and be kept as short as possible. You should use personal mobile phones or call boxes for any outgoing personal telephone calls. You may use charge cards to pay for personal telephone calls on Council telephones with the prior agreement of your line manager. You should refer to departmental guidelines on the personal use of Council mobile phones.

12.4 Intellectual Property is property which enjoys legal protection and is a result of intellectual effort, including patents, copyright, trademarks, designs and software. Where developed in the course of your duties, such intellectual property is the property of the Council. You should not make use of the Council's intellectual property to conduct private work.

12.5 Any copies of material taken for use within the Council must only be as allowed under the Copyright Act and under the appropriate licensing agreement.

## **13 Corruption**

13.1 You must be aware that it is a serious criminal offence for you to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in your official capacity.

## **14 Hospitality and Gifts**

- 14.1 You should only accept hospitality if there is a genuine need to impart information or to represent the Council. You should also ensure that accepting the hospitality does not create a conflict of interest and is not likely to cause embarrassment to the Council.
- 14.2 You should report the offer of hospitality, whether accepted or not, to your line manager.
- 14.3 Gifts should only be accepted if they are of nominal value (under £25) and reported to your line manager.
- 14.4 If gifts of more than nominal value (£25 and over) are offered or you suspect that an improper motive exists, you should always decline the offer and report it to your Chief Officer. This includes any preferential rates offered for goods and services. Chief Officers should report the offer to the Chief Executive.

## **15 Sponsorship**

- 15.1 Where an outside organisation is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the Code's provisions concerning acceptance of hospitality or gifts and working with contractors apply. No sponsorship deal should be made without the prior agreement of your Chief Officer.
- 15.2 Where the Council wishes to sponsor an event or service, you must declare in writing to your Chief Officer any possible conflict of interest or any benefit you or a member of your family or anybody with whom you have a close association. Similarly, where the Council is providing sponsorship or grant aid in the community, you should ensure that impartial advice is given and that there is no conflict of interest involved.

## **16 Contact with the Media**

- 16.1 Any enquiries from the media on work-related matters should be referred to the Public Relations Division. You should seek authorisation from your line manager, who should consult the Public Relations Division, before you speak, write or give interviews to the media.
- 16.2 If you wish to publish books, articles or letters you have written in connection with your duties, you must first consult your Chief Officer. Only with the consent of your Chief Officer may items be published.

## Appendix

A number of additional sources of guidance are listed here. However, this list is not exhaustive and you should ensure that you familiarise yourself with any relevant guidance which may be provided in respect of your particular area of work. Any queries in this respect should be addressed to your line manager or Departmental Personnel Section.

- Personnel Policies and Procedures of the Council.
- Terms and Conditions of Employment
- Confidential Reporting Code
- Guidance on the Disciplinary Procedure
- Internet and Email Use Policy and Guidance
- Equal Opportunities Policy
- General Financial Handbook, containing Standing Orders in Relation to Contracts, Financial Regulations, Financial Procedures, guidance on computers and technology, and extracts from the Local Government Act 1972, the Local Government Finance Act 1988 and the Accounts and Audit Regulations 1983.
- Council's Policy Statement - 'Anti-Fraud/Corruption Strategy'.
- Data Protection Act 1998
- Freedom of Information Act 2000
- Computer Misuse Act 1990
- Energy and Utility Procedural Guide
- Policy Statements on AIDS and other Infectious Diseases
- Administrative Document Officers' Travelling and Subsistence Expenses
- Customer Service Charter
- Minimum Practice Standards Established by Service Regulators (e.g. Commission for Social Care Improvement)
- Codes of Practice Established by Professional Bodies (e.g. General Social Care Council)

# Protocol for Elected Member Behaviour and Conduct

The Code of Conduct approved by the Council for elected Members lays down the formal legal obligations Members must observe in carrying out their duties.

This Protocol is designed to address those standards of behaviour and conduct that are expected of elected Members which are not expressly detailed in the Code but which nevertheless are expected especially bearing in mind the position of elected Members as representatives of the Authority.

Above all, elected Members should lead by example; ensure that their behaviour and conduct properly reflects and promotes the image that is expected of them and of the Authority as a whole; and that their dealing with the public and employees is above reproach.

The following standards of behaviour and conduct are to be observed:-

- Your dealings with the public and all employees will be conducted on the basis of mutual trust, respect and courtesy.
- Offensive, abusive, indecent or violent behaviour in any form is unacceptable.
- Offensive language or verbal aggression is unacceptable.
- Intimidation or victimisation is unacceptable.
- Using your official position for sexual favours or unwanted physical contact or to take any action that could be construed as sexual intimidation is unacceptable.
- Racist language, racist jokes, or other action that can be seen as racial harassment is unacceptable.
- Any action that ridicules, intimidates, or threatens an individual because of their disability, ethnicity, gender, sexual orientation or age is unacceptable.
- Your dealings with the public, employees and fellow elected Members whether verbally, or in writing, must be conducted with courtesy at all times.
- In undertaking your duties as a Councillor, your appearance should be appropriate to the occasion.

- In carrying out your duties as a Councillor and at official meetings, drunkenness, inebriation or being under the influence of illegal drugs is unacceptable.

As Members will be aware, breaches of the official Code of Conduct for Elected Members renders them liable to action being taken by the Standards Committee. Failure to observe the behaviour and conduct specified in this protocol will render Members liable to disciplinary action being taken by their political group.

## **Part 6**

# **Members' Allowances Scheme**

**MEMBERS ALLOWANCES SCHEME - 2011**  
**Approved by the Council on 20<sup>th</sup> April 2011**

**LOCAL GOVERNMENT AND HOUSING ACT 1989**

**LOCAL GOVERNMENT ACT 2000**

**THE LOCAL AUTHORITIES (MEMBERS' ALLOWANCES) (ENGLAND)**  
**REGULATIONS 2003**

The Derbyshire County Council, in exercise of the powers conferred by the Local Authorities (Members' Allowances) (England) Regulations 2003, hereby makes the following scheme:

This scheme may be cited as the Derbyshire County Council Members' Allowances Scheme, and shall have effect for the period commencing on the 20<sup>th</sup> April 2011

Members are reminded of the need to keep detailed supporting information, such as a diary, about every attendance for which they claim. This information should be available for scrutiny by the County Council's Auditors or other relevant persons as and when required.

**4. Definitions**

- a) "councillor" means a member of the Derbyshire County Council who is a councillor;
- b) "year" means the 12 months ending with 31<sup>st</sup> March.
- c) "Schedule 1" sets out the annual equivalent amount and per activity rates payable to members with effect from the 1<sup>st</sup> April 2011. This schedule will be automatically updated annually in accordance with the methodology for year on year changes included as part of the scheme. Members will be informed annually of the rates for the forthcoming year.
- d) "Pay Award" is the increase in the pay award due to employees covered by the NJC Pay Rates for Local Government Services as at the 1<sup>st</sup> April each year.
- e) Later sections of the Scheme mention liability to Tax and the insurance arrangements for Members and Co-optees of the County Council. These sections do not deal with entitlements under the Scheme and are only brief summaries for information. The County Council does not guarantee that they are necessarily accurate or appropriate for individual Members or Co-optees. It is for Members and Co-optees to satisfy themselves personally that their tax and insurance arrangements are in order and they should consult their own advisers, as they think fit, about these matters.

## **5. Basic Allowance**

- a) Subject to paragraph 8, 9 and 10 for each year a flat rate basic allowance shall be paid to each Member. This allowance is designed to cover the time commitment of all Members in all meetings including those with officers and members of the public. It is also intended to cover incidental costs such as the use of home and private telephone facilities.
- b) The rate at which the Basic Allowance is paid is detailed in Schedule 3a. The allowance will be increased in line with the Pay Award with effect from the 1<sup>st</sup> April each year.

## **6. Special Responsibility Allowances**

- a) Subject to paragraph 8, 9 and 10 for each year a special responsibility allowance shall be paid to those Members who perform the special responsibilities in relation to the County Council that are specified in schedule 1 to this scheme.
- b) The rate at which the SRA's are set is detailed in Schedule 3a. The allowance will be increased in line with the Pay Award with effect from the 1<sup>st</sup> April each year.

## **7. Carers of Dependents' Allowance**

- a) Those councillors who incur expenditure for the care of children aged 16 or under, or dependant adults for whom documentary evidence of their care requirements has been provided are eligible to claim care costs for undertaking particular duties. These duties are specified in Schedule 2.
- b) The rate at which the Carers of Dependents Allowance is set is detailed in Schedule 3b. The allowance will equate to the adult national minimum hourly wage and will be updated at the same time as the 'adult national minimum hourly wage
- c) In exceptional circumstances (e.g. where a dependent has a disability and specialised care is required) and with prior authorisation, higher hourly rates than the bench mark may be available
- d) Only actual receipted expenditure will be reimbursed
- e) If a household contains more than one Councillor, care costs may only be claimed once.
- f) The allowance can not be claimed in respect of payments to other members of a Councillor's household

## **8. Travel Allowances**

- a) A Member may be reimbursed in respect of travel allowance, including an allowance in respect of travel by bicycle or by any other non-motorised form of transport, undertaken in connection with or relating to such duties as are specified in Schedule 2.
- b) The rates at which members can be re-imbursed for travel are set down in Schedule 3b. The car mileage rates are the same as those applicable to employees of the County Council under Single Status and shall be changed in line with changes made to the allowances paid to employees.
- c) The basis on which members travel will be reimbursed is detailed in Schedule 4.

## **9. Subsistence Allowance**

- a) Subsistence should not be claimed except in exceptional circumstances
- b) Where a member is travelling out of county and required to be away overnight then the Corporate Resources Department General Office should, where possible, make advance provision for meals and accommodation when making travel arrangements.
- c) Where a member has been unable to arrange for the Council to organise accommodation and subsistence out of county then the maximum rates that can be claimed are shown in Schedule 4. These rates are the same as those applicable to employees and will be updated when the employee rates are updated. Any claim for subsistence must be supported with receipts for actual expenditure incurred.

## **10. Co-optees Allowance**

- a) An annual allowance may be paid in respect of attendance at conferences and meetings for a member of a committee or sub-committee of the County Council who is not a member of the County Council.
- b) Where a co-opted member is a member of a committee by virtue of their employment with the County Council then they will be ineligible to receive the Co-optees allowance.
- c) The rate at which Co-optees allowance is paid is set down in Schedule 3a. The rate is set at a fixed proportion of the Basic Allowance and as such will be increased annually to maintain that relative proportion.

## **11. Renunciation**

A Member may, by notice in writing given to the Director of Finance, elect to forego any part of his or her entitlement to an allowance under this scheme.

## 12. Part-year Entitlements

- a) If an amendment to this scheme changes the amount to which a Member is entitled by way of a basic allowance or a special responsibility allowance, then in relation to each of the periods
1. (i) beginning with the year and ending with the day before that on which the first amendment in that year takes effect, or
  2. (ii) beginning with the day on which an amendment takes effect and ending with the day before that on which the next amendment takes effect, or (if none) with the year,

the entitlement to such an allowance shall be to the payment of such part of the amount of the allowance under this scheme as it has effect during the relevant period as bears to the whole the same proportion as the number of the days in the period bears to the number of days in the year.

- b) An amendment to this scheme may change the duties specified in Schedule 2 to this scheme, or the amount payable by way of a Travelling, Subsistence or Dependant Carers Allowance. Where such an amendment takes place, entitlement to these Allowances shall be to the payment of the amount of the allowance under the scheme as it has effect when the duty is carried out.
- c) The term of office of a Member may begin or end otherwise than at the beginning or end of a year. The entitlement of that Member to a basic allowance shall be to the payment to such part of the basic allowance as bears to the whole the same proportion as the number of days during which his or her term of office subsists bears to the number of days in that year.
- d) Where this scheme is amended as mentioned in sub-paragraph (a), and the term of office of a Member does not subsist throughout the period mentioned in sub-paragraph (a)(i), the entitlement of any such Member to a basic allowance shall be to the payment of such part of the basic allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days during which his or her term of office as a Member subsists bears to the number of days in that period.
- e) Where a Member has during part of, but not throughout, a year such special responsibilities as entitle him or her to a special responsibility allowance, that Member's entitlement shall be to payment of such part of that allowance as bears to the whole the same proportion as the number of days during which he or she has such special responsibilities bears to the number of days in that year.
- f) Where this scheme is amended as mentioned in sub-paragraph (a), and a Member has during part, but does not have throughout the whole, of any period mentioned in sub-paragraph (a)(i) of that paragraph any such special responsibilities as entitle him or her

to a special responsibility allowance, that Member's entitlement shall be to payment of such part of the allowance referable to each such period (ascertained in accordance with that sub-paragraph) as bears to the whole the same proportion as the number of days in that period during which he or she has such special responsibilities bears to the number of days in that period.

### **13. Acting-up Arrangements**

There will be occasions when Members with significant Special Responsibilities may be unable to undertake their duties. In the instances of illness or personal incapacity of the Leader, Deputy Leader or Cabinet Portfolio Member, for a continuous period of 4 weeks or an accumulated absence of 4 or more weeks per quarter, then acting-up arrangements may be instituted as follows, subject to Cabinet approval: -

- In the absence of the Leader, the Deputy Leader would undertake the 'acting-up' arrangements.
- In the absence of the Deputy Leader, a Cabinet Portfolio Member may be nominated by the Leader to undertake the 'acting-up' arrangements.
- In the absence of a Cabinet Portfolio Member, the Leader or Deputy Leader would undertake the portfolio responsibilities; or alternatively such responsibilities may be allocated to another Cabinet Portfolio Member.
- Where acting-up arrangements have been formally agreed due to a Member's illness or personal incapacity, then the Member undertaking the role will be eligible for the higher SRA from the date the acting-up arrangements are agreed.
- Where acting-up arrangements are to apply due to a Member's absence, then the absent Member must provide medical certification for the absence. This will ensure that the absent Member continues to receive their SRA until they are able to resume their duties. If no medical certification is provided the SRA will cease from the date at which the acting-up arrangements have been commenced.
- The acting-up arrangements may only last for a maximum period of 6 months. This time period relates to the Member in the post concerned, not the Member in receipt of the additional SRA for acting-up.

### **14. Withholding of Payments Made to Members**

- a) Where a member is suspended or partially suspended from their responsibilities or duties as a member of the County Council in accordance with Part III of the Local Government Act 2000, or regulations made under that part, the part of either Basic or Special Responsibility Allowances payable to that member in respect of duties or responsibilities from which they are suspended or partially suspended may be withheld by the County Council. The full Council will make any such decision.

- b) Where a member is unavailable to undertake their duties for which they receive a SRA, for any reason other than sickness, and that period exceeds four weeks within a three month period, then the council can withhold any SRA due to the member concerned for the period during which the absence occurred. The Cabinet will make any such decision based on a report from the Director of Legal Services and considering each case on its merits.

## **15. Recovery of Payments Made to Members**

Where a payment has been made to a member that relates to a period where either the member concerned: -

- a) is suspended or partially suspended from their duties and responsibilities as a member in accordance with Part III of the Local government Act 2000 or regulations made under that part;
- b) or ceases to be a member of the County Council;
- c) or is in any other way not entitled to receive the allowance in respect of that period;

The County Council may require that such part of the allowance as relates to any such period be repaid to the County Council. The full Council will make any such decision.

## **16. Payment of Allowances**

- a) Claims for Carers of Dependents, and Travel allowances under this scheme shall be made in writing on a regular basis, preferably monthly. All claims must be made on the appropriate form.
- b) The payment of Basic, Special Responsibility and Co-optees allowance is made automatically and no claim is required.
- c) A claim for allowances shall include, or be accompanied by, a statement by the Member claiming the allowance that he or she is not entitled to receive remuneration in respect of the matter to which the claim relates otherwise than under the scheme.
- d) All payments to members are made by using the Bankers Automated Clearing System on the 15<sup>th</sup> of each month or the nearest preceding working day if the 15<sup>th</sup> falls on the weekend or at a Bank Holiday.

## **17. Pension Scheme Membership**

- a) All elected members, under age 75, can join the Local Government Pension Scheme.
- b) Any payment received by way of Basic or Special Responsibility Allowance is classed as pension able pay.
- c) Any member wishing to join the Scheme should contact: -

Pensions Section  
Corporate Finance Division  
Corporate Resources Department

- d) Pensions Section will be able to provide information on the scheme, the cost of membership and the level of benefits.

## **18. Tax and Benefits**

### **Income Tax**

- a) Basic, Special Responsibility and Carers of Dependants' Allowances are subject to Income Tax as they are payments made in respect of the duties of an office. .
- b) The Inland Revenue is notified of the names and addresses of all Members who claim taxable allowances. Tax is deducted at basic rate until the Inland Revenue notifies the County Council of the appropriate tax code for each Member.
- c) Some expenses incurred by Members in the course of County Council duties as Members may be deductible against tax. Any member who believes that some of his/her expenses as a Member may be tax deductible, should contact his/her Tax Office.

### **National Insurance Contributions**

- a) Basic, Special Responsibility and Carers of Dependants' Allowance payments will attract National Insurance (NI) contributions at levels that vary depending on the total earnings of Members.
- b) Some Members may not be liable to any NI Contributions on Allowances if they are over the state retirement age; in accordance with prevailing legislation. See HMRC website for information.<http://www.hmrc.gov.uk/pensioners/paying-making.htm>
- c) Some Members, who are married women or widows who have elected to pay reduced rate contributions for NI, may also need to have their NI Contributions on allowances calculated at a reduced rate.
- d) Members who are self-employed may also be subject to different levels of NI Contributions.
- e) Members who believe that they fall into any of the above categories should contact the Director of Finance who will seek to obtain further information to assist with the query. Members should also obtain the appropriate certificates from the Department of Work and Pensions (DWP).

## **19. DWP Benefits**

- a) The receipt of allowances may affect Members who are receiving DWP Benefits. All allowances should be declared to the DWP who will be able to advise Members on any affect on their benefits.
- b) Members should note that failure to disclose any allowances to the DWP may result in prosecution.

## **20. Insurance for Members**

- a) The County Council provides insurance cover for Members when they are engaged on business that relates to their activities for the County Council. The insurance does not cover Party Political activities.
- b) The insurance covers certain risks in the following broad categories:
  - Public Liability
  - Officials Indemnity
  - Libel and Slander
  - Employers Liability
  - Personal Accident Insurance
  - Business Travel Insurance

For further details relating to the extent of this cover please contact: -

Insurance Section  
Corporate Finance Division  
Corporate Resources Department.

- c) Please note that the County Council's motor insurance does not extend to Members' own vehicles, even if these vehicles are used on County Council business. Members should ensure that they have advised their own insurers and they are suitably covered if their own vehicles are to be used on County Council business.

**Special Responsibility Allowances**

<b>Post</b>	<b>No.</b>	<b>Relative Responsibility %</b>
<b>Council</b>	Chairman	25.0%
	Vice-Chairman	12.5%
<b>Cabinet</b>	Leader	100.0%
	Deputy Leader	75.0%
	Portfolio Holder	50.0%
<b>Leader of Main Opposition Group</b>	1	25.0%
<b>Leader of Minority Opposition Group (with at least 10%of Council Members)</b>	1	15.0%
<b>Cabinet Support Member</b>	9	12.5%
<b>Improvement and Scrutiny Committees</b>		
Chairman	3	30.0%
Vice-Chairman	3	15.0%
<b>Regulatory Committees</b>		
Chairman	2	25.0%
Vice-Chairman	2	12.5%
<b>Standards Committee</b>		
Chair	1	17.0%
Vice-Chair	1	8.5%
<b>Audit Committee</b>		
Chairman	1	17.0%
Vice-Chairman	1	8.5%

**Note: -**

- A member cannot be in receipt of more than two SRA's at any one time.
- The SRA for the Vice-Chairman of the Council will only be paid where the member concerned is not in receipt of any other SRA of at least 15%.

## **APPROVED DUTIES**

The following are specified as approved duties for the purposes of Carers of Dependents and Travel Allowances, these require no further approval: -

- 1) the attendance at a meeting of the County Council, Cabinet or of any committee or sub-committee of the County Council, or of any other body to which the County Council makes appointments or nominations, or of any committee or sub-committee of such a body;
- 2) attendance as a representative of the County Council on approved Bodies at meetings relating to the body other than meetings of the body itself or Committees or Sub-Committees thereof;
- 3) the attendance at any other meeting, the holding of which is authorised by the County Council, Cabinet or a committee or sub-committee of the County Council, or a joint committee of the County Council and at least one other local County Council within the meaning of section 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee;
- 4) the attendance at a meeting of any association of County Council's of which the County Council is a member;
- 5) the performance of any duty in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a member or members to be present while tender documents are opened;
- 6) the performance of any duty in connection with the discharge of any function of the County Council conferred by or under any enactment and empowering or requiring the County Council to inspect or authorise the inspection of premises;
- 7) duties carried out within the UK arising out of a member holding an office to which a Special Responsibility Allowance applies, or such a duty carried out by their nominee;
- 8) Attendance at County Hall for a meeting with either a member in receipt of a SRA or an officer for the purposes of discussing matters relating to Council business which it is reasonable to expect the member to have an interest;
- 9) attendance at training courses, the purpose of which is to assist members to understand and carry out their duties more effectively, e.g. IT training courses, but are not directly related to the work of the County Council. All such activities to be arranged by the County Council;

- 10) attendance by a member at a Cabinet, Committee or Sub-committee meeting of the County Council for the purpose of making a statement to the meeting where the member is not a member of that Committee or Sub-committee.
- 11) Attendance at Cabinet and relevant Cabco meeting of Shadow Cabinet Members, nominated by the Leader of the principal Minority Group.

The Director of Legal Services may approve the following duties. Any duty so approved will be reported to the next Cabinet meeting for information. Where the Director of Legal Services is unsure of the suitability of such attendance then that decision must be referred to Cabinet. The items included are: -

- 1) duties carried out by any member of a Committee or Sub-Committee, e.g. visits and inspections, in order to discharge the functions of the Committee or Sub-Committee;
- 2) attendance by Members at conferences, seminars and other meetings at which it is necessary for the County Council to be represented. Any such attendance to have been approved by the relevant party leader or deputy leader before being agreed by the Director of Legal Services;
- 3) organised official visits including deputations to government departments;
- 4) attendance at official openings of new premises by members of the appropriate committee;
- 5) attendance of a member in receipt of a Special Responsibility Allowance or nominees as guest speakers at conferences or meetings closely connected with the functions and activities of the Committee, subject to a claim being made by the member to the conference organiser for travelling, subsistence and any fees to be repaid to the County Council;
- 6) official and courtesy visits of a civic nature within the United Kingdom and abroad (such as "twinning" arrangements with overseas local Authorities);
- 7) attendance at interviewing panels.

Finally any other duty approved in advance by the Cabinet or relevant Cabinet Member, as appropriate, may qualify for Carers of Dependants and Travel allowances.

**Amounts Payable to Members under the Members Allowances Scheme**

<b>No Claim Required. These Allowances will be paid Automatically.</b>		<b>Annual Amount 2011-12 £</b>
<b>Special Responsibility Allowances</b>		
<b>Council</b>	Chairman Vice-Chairman	8,220 4,110
<b>Cabinet</b>	Leader Deputy Leader Portfolio Holder	32,868 24,648 16,440
<b>Leader of the Main Opposition Group</b>		8,220
<b>Leader of Minority Opposition Group</b>		4920
<b>Cabinet Support Member</b>		4,110
<b>Scrutiny Panel</b>	Chairman Vice-Chairman	9,864 4,932
<b>Regulatory Committees</b>	Chairman Vice-Chairman	8,220 4,110
<b>Audit Committee</b>	Chairman Vice-Chairman	5,592 2,796
<b>Standards Committee</b>	Chairman Vice-Chairman	5,592 2,796
<b>Basic Allowance</b>		9,948
<b>Co-optees Allowance</b>		656.40

**Schedule 3b**

<b>Mileage rate</b>	<b>April 2011</b>
<b>Per mile first 8,500</b>	<b>45p</b>
<b>Per mile after 8,500</b>	<b>12.2p</b>

**'Carers of Dependents Allowance' maximum per hour** **£5.93**  
(Increasing on 1/10/2011 to **£6.08**)

## SCHEDULE 4

### Travel Claims

The County Council will meet travel costs incurred on authorised official business as long as the chosen method of travel is the most cost-effective method, taking into account of the value of time saved, anticipated subsistence and other expenses and any other relevant matters ***All out of county travel by rail, air, sea or coach should be pre-authorised and booked through the Council using its corporate travel arrangements.***

#### PUBLIC TRANSPORT

##### Rail Travel

Members are entitled to travel using Standard Class – or equivalent - rail tickets. Cheap rate fares should be used where they are available.

Tickets can be obtained through the Corporate Resource Department General Office and organised by Members Support Services whom forward them on to you.

Please note there is a cancellation fee, if a ticket is ordered but not used.

##### Taxi Travel

Taxis should only be used when the alternatives are not available or the following are applicable: -

- there is a significant saving in official time;
- you have to transport heavy luggage and / or equipment;
- where members are travelling together and it is a cheaper option.

Please attach a receipt to your claim.

##### Air Travel

Members should only travel by air if it means an overall saving to the COUNTY COUNCIL through reduced travel and subsistence costs. All journeys must be approved in advance by the relevant committee.

##### Mileage Allowances

Rates are paid at a rate per mile and at the rate prevailing at the time of travel.

You must hold a current full driving licence.

All vehicles used on County Council business should be taxed, have a valid MOT certificate (if older than 3 years) and current insurance policy. The insurance policy must cover you for business use and indemnify the employer against all third party claims (including those concerning passengers) when the vehicle is used on official business.

If your insurance covers ‘Social and Domestic Pleasure only’ your whole policy will be invalid if you use your car for County Council business.

Mileage claimable must be calculated on the basis of the most reasonable route possible for the journey. Where it is reasonable to use Public Transport then members will be expected to do so. If a member decides to travel by car when it is reasonable to use public transport then the member will only be reimbursed up to the lower of the car mileage amount or the cost of public transport. If a member is in any doubt they should seek the advice of the Director of Finance.

The Inland Revenue has ruled that mileage payments in excess of AMAP calculated average mileage costs are subject to payment of National Insurance. This will be deducted at source. The payments will also be subject to Income Tax for which each member will be issued a statement (P11D) detailing the deemed annual “profit” on mileage payments.

### **Overseas Travel**

Overseas travel is classed as any journey outside the United Kingdom. Any journey, which incorporates travel overseas, must have prior authorisation from the relevant Committee. Claims should be made on the basis of any available tourist or cheap rate fares. The County Council will not reimburse the cost of obtaining a passport.

### **Other Costs**

Any parking, toll or similar fee necessarily incurred on official business can be reclaimed from the County Council. Please attach receipts to your claim.

Parking fines or similar charges will not be paid by the County Council.

## **Subsistence Claims**

### **Ordinary Subsistence Rates**

Breakfast	£6.11	
Lunch	£8.41	
Tea	£3.31	
Evening Meal	£10.42	
Bed and Breakfast	£42.49	(£54.25 in London)

### **Absence of 24 hours or More**

Per day or part thereof	£28.24	
Per night	£42.49	(£54.25 in London)

For clarification, should an officer be booked into a hotel on an accommodation only basis, then the maximum allowance for meals would be £28.24 total daily allowance (this is not in addition to any other allowances for individual meals).

Under normal circumstances, any overnight accommodation booked would be inclusive of all necessary meals and these should be invoiced directly to the Council for authorisation and payment in the normal way. This allows the Council to recover any VAT due.

## **Part 7**

### **Management**

### **Structure**

## Derbyshire County Council Organisational Management Structure – Top Two Tiers April 2011

