



Havering

L O N D O N B O R O U G H

GOVERNANCE COMMITTEE (*Special Meeting*) AGENDA

7.30pm	Wednesday 17 February 2010	Havering Town Hall Main Road, Romford
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Members 10: Quorum 4

COUNCILLORS:

Conservative Group (6)	Residents' Group (2)	Independent Local Residents' Group (1)	Labour Group (1)
Frederick Thompson (C) Gary Adams (VC) Robert Benham Steven Kelly Eric Munday Michael White	Clarence Barrett Gillian Ford	Jeffrey Tucker	Keith Darvill

**For information about the meeting please contact:
Ian Buckmaster (01708) 432431
e-mail ian.buckmaster@havering.gov.uk**

NOTES ABOUT THE MEETING

1. HEALTH AND SAFETY

The Council is committed to protecting the health and safety of everyone who attends meetings of its Committees.

At the beginning of the meeting, there will be an announcement about what you should do if there is an emergency during its course. **For your own safety and that of others at the meeting, please comply with any instructions given to you about evacuation of the building, or any other safety related matters.**

2. MOBILE COMMUNICATIONS DEVICES

Although mobile phones, pagers and other such devices are an essential part of many people's lives, their use during a meeting can be disruptive and a nuisance. Everyone attending is asked therefore to ensure that any device is switched to silent operation or switched off completely.

3. CONDUCT AT THE MEETING

Although members of the public are welcome to attend meetings of the Committee, they have no right to speak at them. Seating for the public is, however, limited and the Council cannot guarantee that everyone who wants to be present in the meeting room can be accommodated. When it is known in advance that there is likely to be particular public interest in an item the Council will endeavour to provide an overspill room in which, by use of television links, members of the public will be able to see and hear most of the proceedings.

The Chairman of the meeting has discretion, however, to invite members of the public to ask questions or to respond to points raised by Members. Those who wish to do that may find it helpful to advise the Committee Officer before the meeting so that the Chairman is aware that someone wishes to ask a question.

PLEASE REMEMBER THAT THE CHAIRMAN MAY REQUIRE ANYONE WHO ACTS IN A DISRUPTIVE MANNER TO LEAVE THE MEETING AND THAT THE MEETING MAY BE ADJOURNED IF NECESSARY WHILE THAT IS ARRANGED.

If you need to leave the meeting before its end, please remember that others present have the right to listen to the proceedings without disruption. Please leave quietly and do not engage others in conversation until you have left the meeting room.

AGENDA ITEMS

1 CHAIRMAN'S ANNOUNCEMENTS

The Chairman will announce details of the arrangements in case of fire or other events that might require the meeting room or building's evacuation.

2 APOLOGIES FOR ABSENCE AND ANNOUNCEMENT OF SUBSTITUTE MEMBERS (if any) - receive.

3 DECLARATION OF INTERESTS

Members are invited to declare any interests in any of the items on the agenda at this point of the meeting. Members may still declare an interest in an item at any time prior to the consideration of the matter.

4 APPOINTMENT OF DIRECTOR OF CEME

5 LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009 – designation of statutory Scrutiny Officer

6 MONITORING OFFICER NO 37 AMENDMENTS TO THE CONSTITUTION

REVIEW OF THE COUNCIL'S CONSTITUTION

Each of the following reports relates to aspects of the continuing review of the Council's Constitution. To avoid unnecessary repetition, an abbreviated report format has been used. As the risks and implications are the same for each of them, the following comments apply to all:

Financial implications and risks:

There are no significant financial implications or risks arising from this exercise. The cost of reproducing the new Constitution will be met from existing budget provision.

Legal implications and risks:

The Council has a legal obligation to adopt a Constitution and to keep it under review. The new executive arrangements effective from May 2010 require extensive review to be undertaken.

Human Resources implications and risks:

There are none.

Equalities implications and risks:

The purpose of the Constitution is to assist the community to understand how the Council works and to make its processes and procedures accessible.

Background papers

There are none.

- 7 **LOCAL CHOICE FUNCTIONS**

- 8 **RESPONSIBILITY FOR EXECUTIVE FUNCTIONS**

- 9 **PROPER OFFICER FUNCTIONS**

- 10 **EXECUTIVE PROCEDURE RULES**

- 11 **OVERVIEW & SCRUTINY PROCEDURE RULES**

- 12 **ACCESS TO INFORMATION RULES**

- 13 **CONTRACT PROCEDURE RULES**

**Cheryl Coppel
Chief Executive**



GOVERNANCE COMMITTEE

REPORT

17 February 2010

Subject Heading:	APPOINTMENT OF DIRECTOR OF CEME
CMT Lead:	Christine Dooley Assistant Chief Executive 01708 432442
Report Author and contact details:	Ian Buckmaster Committee Administration Manager 01708 432431 ian.buckmaster@havering.gov.uk
Policy context:	To appoint a successor director of CEME
Financial summary:	No additional expenditure is anticipated

REPORT DETAIL

In 2006, the Leader of the Council was appointed as a director of CEME. This is an appointment resulting from the Council's financial interest in CEME, which is legally a limited company.

Between 2005 and 2006, the director had been the then Chief Executive, Stephen Evans but, following Mr Evans' decision to retire from the Council's service, the Leader was appointed to replace him.

In preparation for the transfer of LSE funding to the Council with effect from 1 April 2010, it is suggested that the Leader be replaced as a director of CEME by the Council's Group Director, Finance and Commerce in order to prevent any potential conflicts of interest under the Members' Code of Conduct. The appointment of a director in replacement of the Leader will ensure that the Council's future interest in CEME is safeguarded.

RECOMMENDATION

That the Group Director, Finance and Commerce be appointed a director of CEME in succession to the Leader of the Council

BACKGROUND PAPERS

There are no background papers.



GOVERNANCE COMMITTEE

REPORT

17 February 2010

Subject Heading:

**LOCAL DEMOCRACY, ECONOMIC
DEVELOPMENT AND CONSTRUCTION
ACT 2009 – designation of statutory
Scrutiny Officer**

CMT Lead:

Christine Dooley
Assistant Chief Executive
01708 432442

Report Author and contact details:

Ian Buckmaster
Committee Administration Manager
01708 432431
ian.buckmaster@havering.gov.uk

Policy context:

New statutory requirement to designate
an officer

Financial summary:

No additional expenditure is anticipated

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

This report advises the Committee of the need for a new, statutory Scrutiny Officer to be designated and suggests how that be achieved.

The new role is created by the Local Democracy, Economic Development and Construction Act 2009 (“the Act”) and the Council are required to designate an officer to undertake it on and from 1 April 2010.

RECOMMENDATION

That the Committee **RECOMMEND to the Council:**

1. That the post of Democratic Services Manager be designated as statutory Scrutiny Officer with effect from 1 April 2010 and that the current holder of the post, Philip Heady, be appointed accordingly.
2. That the Assistant Chief Executive Legal & Democratic Services be authorised to make the amendments to the Council’s current Constitution necessary to give effect to this designation/appointment.

REPORT DETAIL

- 1 The Act includes a number of measures intended by the Government to enhance community engagement and the democratic process. Section 31 requires the appointment of a Scrutiny Officer, as follows:
 - (1) Subject as follows, a local authority in England must designate one of their officers to discharge the functions in subsection (2).
 - (2) Those functions are—
 - (a) to promote the role of the authority’s overview and scrutiny committee or committees;
 - (b) to provide support to the authority’s overview and scrutiny committee or committees and the members of that committee or those committees;
 - (c) to provide support and guidance to—
 - (i) members of the authority,
 - (ii) members of the executive of the authority, and
 - (iii) officers of the authority, in relation to the functions of the authority’s overview and scrutiny committee or committees.
 - (3) An officer designated by a local authority under this section is to be known as the authority’s “scrutiny officer”.
 - (4) A local authority may not designate any of the following under this section—
 - (a) the head of the authority’s paid service designated under section 4 of the Local Government and Housing Act 1989;
 - (b) the authority’s monitoring officer designated under section 5 of that Act;
 - (c) the authority’s chief finance officer, within the meaning of that section.

- (5) [not applicable to Havering]
- (6) In this section, references to an overview and scrutiny committee include any sub-committee of that committee.”
- 2 With the exception of the duty in subsection (2(a)) – duty to promote the role of Overview & Scrutiny – which is entirely new, since 2002 when the appointment of Overview & Scrutiny Committees (OSCs) became mandatory, what are now these statutory functions have undertaken by staff in Committee Administration of Legal & Democratic Services, who report to the Democratic Services Manager.
- 3 It will be noted that none of the existing statutory officers – Head of Paid Service, Chief Financial Officer and Monitoring Officer – is eligible to be designated as Scrutiny Officer.
- 4 In comments made to Parliament, Ministers made clear their expectation that, while the existing statutory officer are required to be of Chief Officer status, there was no need for the Scrutiny Officer to be of that rank. The Democratic Services Manager is a third tier manager and of sufficient status and authority to be able to undertake the new statutory functions.
- 5 Given that staff reporting to him are already undertaking that range of work – other than in relation to “promoting” Overview & Scrutiny – it is logical for the Democratic Services Manager to be designated the Scrutiny Officer.
- 6 The Committee is therefore asked to recommend accordingly to the Council. This will require amendment of the current Constitution, although it will be superseded in May, as the designation must be effective from 1 April. The Committee is asked to recommend that the necessary adjustments be made.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no significant financial implications or risks.

Legal implications and risks:

Compliance with the requirements of the Act is mandatory.

Human Resources implications and risks:

There are no staffing implications.

Equalities implications and risks:

There are no equalities implications.

BACKGROUND PAPERS

There are no background papers



**GOVERNANCE
COMMITTEE**

REPORT

17 February 2010

Subject Heading:

**MONITORING OFFICER AMENDMENTS
TO THE CONSTITUTION – NO 37**

Report Author and contact details:

CHRISTINE DOOLEY
01708 432442

Policy context:

Monitoring Officer Amendments to the
Constitution

Financial summary:

Not applicable

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

Part 2 Article 15.02(c) of the Constitution authorises the Monitoring Officer to amend the Constitution to correct errors or to comply with any legal requirement or to reflect organisational changes to the Council's structure.

The constitution provides that this committee must be notified of any such amendment at the first reasonable opportunity.

RECOMMENDATIONS

That this report be noted.

REPORT DETAIL

The Monitoring Officer has the ability to make limited amendments to the Constitution as set out in the summary above.

Amendments to the Constitution were made by the Monitoring Officer since 1st May 2002 and this latest amendment is Amendment No. 37 dated 2nd February 2010.

In addition to the Constitutional requirements the Monitoring Officer has determined that she will notify Group Leaders as soon as any Monitoring Officer amendments are made to the Constitution. The notification will then appear in Calendar Brief so that all members are aware of the amendments. The notification of the amendments will be numbered so there is no confusion.

The meeting of this committee is the first opportunity for the reporting of the most recent amendments made and the committee is requested accordingly to note the amendments made.

IMPLICATIONS AND RISKS

Financial implications and risks: None

Legal implications and risks: The Constitution provides for the Monitoring Officer to make certain amendments to the constitution

Human Resources implications and risks: None

Equalities implications and risks: None

BACKGROUND PAPERS

E-mail correspondence re: amendments

SUBJECT: AMENDMENTS TO CONSTITUTION

Notification No. 37

Date 2nd February 2010

Notification of amendments to the constitution

Amendments made by the Monitoring Officer

Part 2, Article 15.02(c) of the constitution provides that the Monitoring Officer has a limited authority to amend the constitution. The Monitoring Officer is authorised to amend the constitution to correct errors or to comply with any legal requirement or to reflect organisational changes to the Council's structure. The Governance Committee must be notified of any such amendment at the first reasonable opportunity.

In accordance with this authority, the Monitoring Officer gives notice of the following amendments to the constitution effective from the respective dates shown in the attached document headed Transitional Arrangements.

Part and article/ section	Page reference	Substance of amendment / amended wording			Reason for amendment
Part 3 Section 6	163	Public Health Act 1936			
		Section	Description	Proper Officer	
		84	Officer authorised to issue a certificate requiring an article to be cleansed purified, disinfected or destroyed.	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer. Public Protection Manager.	
		Section	Description	Proper Officer	
		85	Officer authorised to issue report to take measures to cleanse verminous clothing.	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer. Public Protection Manager.	

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Part and article/ section	Page reference	Substance of amendment / amended wording			Reason for amendment						
Part 3 Section 6	163	Public Health Act 1961									
		<table border="1"> <thead> <tr> <th data-bbox="528 376 662 405">Section</th> <th data-bbox="662 376 948 405">Description</th> <th data-bbox="948 376 1214 405">Proper Officer</th> </tr> </thead> <tbody> <tr> <td data-bbox="528 405 662 826">37</td> <td data-bbox="662 405 948 826">Officer authorised who may cause verminous articles to be disinfected or destroyed.</td> <td data-bbox="948 405 1214 826">The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer. Public Protection Manager.</td> </tr> </tbody> </table>	Section	Description	Proper Officer	37	Officer authorised who may cause verminous articles to be disinfected or destroyed.	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer. Public Protection Manager.			
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GOVERNANCE COMMITTEE

REPORT

17 FEBRUARY 2010

Subject Heading:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 3: Local Choice
functions

CMT Lead:

Christine Dooley, Assistant Chief
Executive/Monitoring Officer

Report Author and contact details:

Ian Buckmaster, Committee
Administration Manager
01708 432431
ian.buckmaster@havering.gov.uk

Policy context:

The Council's Constitution is being
reviewed prior to the introduction of new
executive arrangements in May 2010

Financial summary:

There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

The text of the Local Choice Functions is attached.

The Working Group has not identified any issues to refer to this Committee for consideration in detail.

RECOMMENDATIONS

- 1 That the Committee consider the various issues referred to in the report and determine what, if any, changes are to be made to the draft text of the Local Choice Functions.
- 2 That the draft, as (if) amended, be approved as the revised Local Choice Functions.
- 3 That the Committee **RECOMMEND** to Council that the revised Local Choice Functions be adopted.

5 Local choice functions

The following functions are specified as local choice functions in schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the regulations).

Function	Decision-making body
1. Any function under a local Act other than a function specified or referred to in regulation 2 or schedule 1 of the regulations	Cabinet
2. Determining an appeal against any decision made by or on behalf of the authority	Adjudication and Review Committee
3. The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools	Adjudication and Review Committee
4. The making of arrangements pursuant to Sections 94(1), (1A) and (4) of the School Standards and Framework Act 1998 (admissions appeals)	Adjudication and Review Committee
5. The making of arrangements pursuant to Section 95(2) of the School Standards and Framework Act 1998 (Children to whom Section 87 applies): appeals by governing bodies	Adjudication and Review Committee
6. Conducting best value reviews in accordance with the provisions of any order for the time being having effect under section 5 (best value reviews) of the Local Government Act 1999	Cabinet
7. Any function relating to contaminated land	Head of Housing & Public Protection
8. Discharging any function relating to the control of pollution or the management of air quality	Head of Housing & Public Protection
9. Serving an abatement notice in respect of a statutory nuisance	Head of Housing & Public Protection
10. Passing a resolution that schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area	Regulatory Services Committee
11. Inspecting the authority's area to detect any statutory nuisance	Head of Housing & Public Protection
12. Investigating any complaint as to the existence of a statutory nuisance	Head of Housing & Public Protection
13. Obtaining information under section 330 of the Town and Country	<ul style="list-style-type: none">• Head of Housing & Public Protection

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Function	Decision-making body
Planning Act 1990 about interests in land	<ul style="list-style-type: none"> • Head of Regeneration and Strategic Planning • Head of Development and Building Control • Assistant Chief Executive Legal & Democratic Services • Head of Streetcare
14. Obtaining particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976	<ul style="list-style-type: none"> • Head of Development and Building Control • Assistant Chief Executive Legal & Democratic Services • Head of Regeneration and Strategic Planning
15. Making agreements for the execution of highways works	<ul style="list-style-type: none"> • Head of Streetcare • Assistant Chief Executive Legal & Democratic Services
16. Appointing any individual: (a) to any office other than an office in which he is employed by the authority (b) to any body other than: <ul style="list-style-type: none"> • the authority • a joint committee of two or more authorities, or (c) to any committee or sub-committee of such a body And the revocation of such appointment	Governance Committee
17. Making agreements with other local authorities for the placing of staff at the disposal of those other authorities	Chief Executive or relevant Group Director

GOVERNANCE COMMITTEE

REPORT

17 FEBRUARY 2010

Subject Heading:

CMT Lead:

Report Author and contact details:

Policy context:

Financial summary:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 3: Responsibility
for Executive functions
Christine Dooley, Assistant Chief
Executive/Monitoring Officer
Ian Buckmaster, Committee
Administration Manager
01708 432431
ian.buckmaster@havering.gov.uk
The Council's Constitution is being
reviewed prior to the introduction of new
executive arrangements in May 2010
There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	□
Excellence in education and learning	□
Opportunities for all through economic, social and cultural activity	X
Value and enhance the life of every individual	X
High customer satisfaction and a stable council tax	X

The text of the revised Executive Procedure Rules is appended.

There were no issues to which the Working Group wished to draw attention.

RECOMMENDATIONS

- 1 That the Committee consider the various issues referred to in the report and determine what, if any, changes are to be made to the draft text of the Delegation of Executive Functions.
- 2 That the draft, as (if) amended, be approved as the revised Delegation of Executive Functions.
- 3 That the Committee **RECOMMEND** to Council that the revised Delegation of Executive Functions be adopted.

2 Executive functions

2.1 The Leader of the Council may by way of written notice delegate Executive functions to:

- Cabinet
- Individual Cabinet Members
- Staff
- Area Committees
- Joint Committees

And may exercise any Executive functions personally provided notice is given.

2.2 The Leader of the Council will give notice in writing, duly signed and dated, to the Proper Officer as to the exercise of Executive functions and will submit a fresh notice on each occasion that those delegations are amended.

2.3 Executive functions may not be exercised by the Leader or individual Cabinet Members until written notice in accordance with 2.2 above has been received by the Proper Officer. The Proper Officer will maintain a record of Leader delegations.

2.4 The following General functions are a list of functions which the Leader may delegate to full Cabinet. The Leader may upon given written notice add other Executive functions to this list.

General functions

Policy matters

- 1 To formulate the Council's overall policy objectives and priorities and to recommend them to Council for approval where they fall within the policy framework.
- 2 To determine the Council's strategy and programme in relation to the policy and budget framework set by full Council.
- 3 To determine all substantial policy matters and strategic decisions and those minor matters which are referred by the Leader at the request of an individual Cabinet Member as being particularly contentious.

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- 4 To determine the Council's policy, strategy and programme in relation to the area and in respect of all Executive matters.
- 5 To co-ordinate the statutory functions and obligations of the Council with respect to equality of opportunity and non-discrimination, including its function as an employer.
- 6 To promote strategic and Council-wide initiatives to improve the quality, efficiency and effectiveness of the Council's services to the public.

Other matters

- 7 To allocate and control financial and land and property resources, to determine priorities in the use of these resources, and take any other action necessary to achieve those objectives.
- 8 To have overall responsibility for acquisitions and disposal of any interest in land, buildings or the real and leasehold property of the Council and to have responsibility for land and property used for operational purposes, 'in principle', disposals of land in excess of £1,000,000 [with the Cabinet Member for Finance & Commerce having authority to agree the 'in principle' disposal of land etc., below that sum.]
- 9 To exercise control over the Council's revenue and capital budgets (including the housing revenue account).
- 10 To exercise control over all human resource matters including the number and type of staff, payroll and pensions, equalities issues, occupational health and safety and organisational development (subject to the Council's policies and procedures) except for staff appointments and dismissals.
- 11 To oversee and take responsibility for effective joint work with partner agencies.
- 12 To approve funding for voluntary organisations.
- 13 To affiliate with and appoint representatives to outside bodies, where these are not specifically identified elsewhere in this constitution.
- 14 To consider whether the Council should give evidence before a parliamentary select committee, royal commission, Government committee or similar body.
- 15 To undertake those functions assigned to the Cabinet under Part 3, section 5: local choice functions.
- 16 To award all contracts above a total contract value of £10,000,000.

- 17 To approve applications for the submission of bids for grants and other financial assistance which require the provision of additional finance or match funding or are likely to lead to residual costs or implications for the Council
- 18 To be responsible for all executive matters even if not expressly set out in Part 3 of this constitution.

Corporate functions

Finance

- 19 To take decisions on all matters relating to the Council's finances including but not exclusively:
 - (a) budgetary control
 - (b) establishing long and short term capital and revenue programmes for all areas of service and allocations of both capital and revenue expenditure to other services
 - (c) financial planning
 - (d) operational management of insurance arrangements
 - (e) budget revisions
 - (f) considering the annual estimates of revenue expenditure and income and the Treasury Policy Statement and make recommendations to the Council on the setting of the council tax base and the council tax
 - (g) virements in excess of £1 million
 - (h) virements between services over £250,000 and up to and including £999,999

Treasury management strategy

- 20 To consider the Council's treasury management strategy, making recommendations to full Council on its content and to subsequently monitor its effectiveness taking account of appropriate expert advice

Resource management

- 21 To exercise the Council's functions relating to the use of the Council's resources and human resources. Such functions include:
 - (a) corporate human resources policies and procedures
 - (b) e-government and customer access
 - (c) responsibility for the Council's health and safety policies as an employer

- (d) Council's Employment Relations framework
- (e) overall responsibility for properties held for investment purposes
- (f) corporate purchasing policies and procedures
- (g) corporate communication strategies
- (h) overall responsibility for the management and maintenance of the Council's office accommodation and corporate assets
- (i) emergency planning and civil defence.

Education functions

22 To exercise the Council's functions in relation to education including the formulation of the Council's future policies for recommendation to Council where appropriate and their co-ordination and implementation. Such functions include, but are not limited to, the following:

- (a) proposals for schemes of the fair funding of schools, including special schools
- (b) making awards and other allowances to students attending courses at institutions for further and higher education and exercising the discretionary powers of the Council in that connection
- (c) the provision of day care under section 18 of the Children Act within Early Years Service.

Quality of life functions

Environment

23 To exercise the Council's functions in relation to environmental matters including the formulation of the Council's policies for referral to Council where appropriate and their co-ordination and implementation. Such functions include (but are not limited to) the following:

- (a) town planning
- (b) environmental health
- (c) highway engineering
- (d) public health
- (e) building control

- (f) consumer protection and licensing
- (g) traffic management and parking control
- (h) transport planning
- (i) waste and energy management
- (j) cemeteries
- (k) managing the transport fleet.

24 To encourage and promote the environmentally sustainable development and regeneration of the borough and the health of the population through its planning, transport, economic planning, waste and energy management and environmental health policies and programmes.

25 To adopt or amend Interim Planning Guidance for the borough and to approve planning briefs and guidance for the development of sites in the borough and conservation area statements.

26 To respond to consultation exercises or notices of intent by external authorities where they relate to strategic issues pertaining to planning control.

Housing

27 To exercise the Council's functions in relation to housing and homelessness including the formulation and co-ordination of policies and their co-ordination and implementation. Such functions include, but are not limited to, the following:

- (a) assessing housing need, demand and supply and developing appropriate strategies, including specific strategies for groups in need
- (b) oversight and monitoring of the ALMO Homes in Havering
- (c) managing and maintaining all land and property held for the Council's housing functions other than that land and property the management of which has been delegated to Homes in Havering.
- (d) assessing and setting rents and other charges
- (e) setting and varying charges for the use of garages, car parking spaces and other facilities on the Council's housing estates
- (f) making and rescinding compulsory purchase order resolutions under the relevant housing legislation

- (g) keeping under review issues affecting non-public housing tenures in accordance with the Council's housing strategy, in pursuance with the Council's duties under current legislation
- (h) taking responsibility for all matters relating to housing associations except the appointment of Members

Leisure and cultural services

28 To exercise the Council's functions in relation to leisure services, including the formulation and co-ordination of policies and their co-ordination and implementation. Such functions include (but are not limited to) the following:

- (a) library and information services
- (b) arts and museum services
- (c) providing and maintaining leisure facilities for children and young persons
- (d) providing facilities for sports
- (e) developing tourism opportunities and provision of tourism services
- (f) taking responsibility for provision and upkeep of the Council's public parks, gardens, open spaces, allotments, cemeteries and burial grounds.

29 To develop strategic policies for the provision of co-ordinated, accessible and quality leisure services that reflect the multi-ethnic, social and cultural diversity of those who live, work and study within the borough.

30 To plan the provision of leisure facilities whether provided by the Council or others.

Social care and health

31 To exercise the Council's functions in relation to social services including the formulation of the Council's policies and their co-ordination and implementation. Such functions include (but are not limited to) the following:

- (a) all matters within Schedule 1 of the Local Authority Social Services Act 1970 and, in particular, functions in relation to child protection, children in need, community care and mental health provision
- (b) all matters relating to the National Health Services, including the consideration and review of NHS policies in so far as they affect the borough and in particular to have responsibility for

joint care planning and liaison with the appropriate health authorities.

2.5 The following Functions may be delegated to individual Cabinet members by the Leader.

Each individual Cabinet member, as appropriate, may be delegated one or more of the following functions, within the portfolio allocated to him or her by the Leader. If a Cabinet member is unable to act, the Leader may act on his or her behalf, or may authorise another Cabinet member to do so. Matters delegated to individual Cabinet members under this section give them individual decision making powers. Where any paragraph refers to 'in conjunction with' or 'in consultation with' the decision remains that of the individual Cabinet member.

- 1 To monitor the budgets and the performance of the services allocated by the Leader.
- 2 Where there are implications for policies of the Council, to agree members of staff's responses to consultation papers from:
 - the Government (including White and Green papers)
 - the London Councils, the Greater London Authority, the Local Government Association and all other bodieswhere those papers affect the services allocated.
- 3 To agree an appropriate response by members of staff to issues raised in petitions presented to the Council in respect of allocated services.
- 4 To determine priorities in conjunction with the relevant Group Director, Assistant Director, Assistant Chief Executive and Head of Service (within the policy framework and budget).
- 5 To make suggestions for policy initiatives (within the policy framework and budget) and for amendments to the policy framework, for agreement by the Cabinet and Council.
- 6 To recommend to the Cabinet a response to reports from the overview and scrutiny committees in respect of the allocated services.
- 7 To approve an exception to the Contracts Procedure Rules set out in Part 4 of this constitution, in accordance with Rule 26(a) of those Rules.
- 8 To award contracts, agree extensions of contract terms and awards/extensions of Consortia contracts of a value above £5,000,000 and less than £10,000,000 and contracts where external funding is guaranteed and there is no longer term financial commitment to the Council. *(Note: Pension Committee has powers to invite tenders and award contracts for investment matters within their terms of reference)*

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- 9 To review customer satisfaction, results of consultation with stakeholders and the efficiency of service provision generally and to agree arrangements for continuous improvements to be made.
- 10 To consider and recommend plans in respect of the portfolio allocated.
- 11 To consider the needs of the allocated service for particular properties and to make recommendations to the Cabinet as appropriate.
- 12 To promote effective relationships and partnerships between the Council and all other bodies and agencies affecting the community.
- 13 To consider reports on the exercise of virement, within the Budget Framework Procedure Rules set out in Part 4 of this constitution.
- 14 To consider reports on contract overspends and to report to Cabinet as necessary.
- 15 To consult any advisory bodies as directed by the Cabinet
- 16 To agree the demolition of housing stock in appropriate cases
- 17 To agree minor matters and urgent or routine policy matters
- 18 To approve supplementary planning guidance and policies.
- 19 To approve the 'in principle' decision of the Council disposing of an interest in property or land where the disposal or acquisition receipt is not considered likely to exceed £1,000,000.
- 20 To approve individual virements within a service above £250,000 up to and including £999,999.
- 21 To approve virements within services where resources are available or where they are not but the virement is below the identified threshold.
- 22 To approve all virements over £250,000 unless it is a permanent virement between services.
- 23 To approve all in year changes to both fees and charges.
- 24 To approve the write off of irrecoverable debts where the individual debt exceeds £25,000 or where the overall level of service debt exceeds a cumulative £250,000 or 1% of the annual service debt in any financial year whichever is the higher.
- 25 To determine allocations from the contingency.
- 26 To consider and agree the setting up of any specific services earmarked reserves along with the arrangements for their use.

- 27 To authorise expenditure of the Cemeteries and Crematorium Improvement from Income Fund and the Cemeteries and Crematorium Improvement Donation Fund above the level delegated to the Head of Housing & Public Protection.
- 28 To approve all Community Safety Partnership Strategies arising under the Crime and Disorder Act or other related legislation.
- 29 The Leader may delegate other functions not expressly set out herein to individual Cabinet Members provided they are Executive functions and provided due notice of the exact terms of the delegation and the name of the Cabinet Member to exercise the delegation is given by notice in writing by the Leader to the Proper Officer as set out in paragraphs 2.2 and 2.3 above.

2.6 Portfolios to be assigned to individual Cabinet members

The Leader is responsible for assigning portfolios to individual Cabinet members. Any Cabinet member, including the Leader, may hold more than one portfolio, although a Cabinet Member need not hold any portfolio. Suggested portfolios are as follows, although the Leader may determine the nature of any portfolio as he or she considers appropriate:

- IT
- Procurement
- Project Management
- Asset Management
- Development Control
- Building Control
- Exchequer Services
- Finance and Performance
- Human Resources
- Commissioning
- Adult Social Care
- Children & Young People's Services
- Learning & Achievement
- Schools for the Future
- Community Engagement
- Policy and Partnerships
- Communications
- Culture & Leisure
- Customer Services

- Housing
- Public Protection
- Regeneration
- Strategic Planning
- Streetcare
- Legal Services
- Democratic Services
- Community Safety
- Health & Safety
- Electoral Registration

The names of individual Cabinet Members are listed on the Council's website and on a list which is available at the Town Hall reception.

Joint working delegations

2.7 Functions exercised by joint arrangements with another Council or other Councils

As stated in Article 11.02(e), the Council has established the following joint arrangements under section 101(5) of the Local Government Act 1972:

- (a) The Thames Chase Joint Committee
- (b) London Councils

The functions that the Council has delegated to each of these joint arrangements are set out below:

(a) The Thames Chase Joint Committee

This committee comprises three members from each of the following local authorities: Brentwood Borough Council, Essex County Council, London Borough of Barking & Dagenham, London Borough of Havering and Thurrock Borough Council.

Its function is to oversee the development of a community forest.

(b) London Councils

London Councils comprises all 33 London local authorities.

Its functions are set out in full in Schedule 2 of the *Association of London Government Agreement* dated 13 December 2001 (as amended). In summary, the Council committee is authorised to deal with the following matters:

- consulting on common interests of London local authorities, discussing local government matters and providing forums for such discussion
- representing the interests of London local authorities to other bodies, including national and local government, Parliament and the European Union
- formulating policies for the development of democratic and effectively managed local government
- appointing representatives or staff to serve on any other body
- representing the interests of London local authorities as employers
- disseminating relevant information to London local authorities
- providing information to the public and other bodies on London Councils policies and local government issues relevant to London
- acting as the regional body of the Local Government Association.

London Councils have the following committees which carry out functions on behalf of the Council:

Transport and Environment Committee

This committee comprises one member from each of the 33 London local authorities and a member from Transport for London (which is part of the Greater London Authority).

Its functions are set out in full in Schedule 2 of the *Association of London Government Transport and Environment Committee Agreement* dated 13 December 2001 (as amended). In summary, the committee is authorised to deal with the following matters:

- undertaking various matters related to parking adjudicators, including making appointments, providing accommodation and administrative staff, determining the places at which adjudicators will sit and making an annual report on adjudicators' discharge of their functions
- determining penalty charge levels and fees and discounts for early payment

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- publishing and updating the Code of Practice for Parking in London
- co-ordinating and maintaining vehicle removal and clamping operations
- establishing and maintaining a communications and control service to deal with vehicle removals
- overseeing the London lorry ban
- overseeing the London taxicard scheme.

Housing Forum

- i. This committee comprises one representative from each of the following London local authorities:

Barnet, Brent, Camden, Croydon, Ealing, Enfield, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Havering, Hillingdon, Hounslow, Islington, Lambeth, Lewisham, Merton, Newham, Redbridge, Southwark, Tower Hamlets and Waltham Forest.

Its functions are set out in full in Schedule 3 of the *Association of London Government Agreement* dated 13 December 2001 (as amended). In summary, the committee is authorised to deal with the following matters:

- considering housing functions of local authorities generally and housing activities of other housing agencies where relevant
- providing, organising and co-ordinating housing publicity and information on issues relevant to member authorities
- conducting research, evaluation and analysis on housing matters including housing policy and service delivery
- conducting investigations into and collecting information about housing, and making such information available
- assisting member boroughs with publicity on housing functions
- providing professional, administrative and technical assistance to member boroughs and other bodies in the preparation and implementation of specific projects.

The Grants Committee

This committee comprises one member from each of the 33 London local authorities.

Its functions are:

- To make grants to voluntary organisation benefiting more than one London borough.
- To consider and review the needs of London in relation to the grants scheme.
- To recommend an annual budget to the London Councils which, once approved, must be agreed to by a two-thirds majority of the London local authorities before it can be binding on all London local authorities.

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GOVERNANCE COMMITTEE

REPORT

17 FEBRUARY 2010

Subject Heading:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 3: Proper Officer
functions

CMT Lead:

Christine Dooley, Assistant Chief
Executive/Monitoring Officer

Report Author and contact details:

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Administration Manager
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Policy context:

The Council's Constitution is being
reviewed prior to the introduction of new
executive arrangements in May 2010

Financial summary:

There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

A number of legal provisions require that certain functions be undertaken by specific officers but allow the Council flexibility in designating exactly who should deal with them. Such officers are referred to by the generic term "Proper Officer". This report seeks approval of the allocation of Proper Officer functions, which thus authorise specific officers to perform particular tasks.

The Working Group have not identified any issues for to consideration.

RECOMMENDATIONS

- 1 That the Committee consider what, if any, changes are to be made to the draft text of the Proper Officer functions.
- 2 That the draft, as (if) amended, be approved as the revised statement of Proper Officer functions.
- 3 That the Committee **RECOMMEND** to Council:
 - (a) that the revised Proper Officer functions be adopted; and
 - (b) that it resolve that the various officers designated in the tables appended be appointed Proper Officers for the functions specified.

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6 Proper officer functions

The following tables show the Proper Officers appointed for the functions specified.

The deputy proper officer is shown after the proper officer. The deputy proper officer is appointed to act where the proper officer is absent and/or unable to act. Where neither the designated proper officer nor the designated deputy proper officer is able to act, or if there is no specified designated proper officer, the Chief Executive is appointed to act or may designate an appropriate person to act as proper officer or deputy proper officer. If the Chief Executive is unable to act, this power shall be delegated to the Assistant Chief Executive Legal & Democratic Services or, if the Assistant Chief Executive Legal & Democratic Services is unavailable, to the next most senior lawyer employed by the Council available to act.

Public Health Act 1936

Section	Description	Proper officer
84	Officer authorised to issue a certificate requiring an article to be cleansed purified, disinfected or destroyed.	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer. Public Protection Services Manager.
85	Officer authorised to issue report to take measures to cleanse verminous clothing.	As above Public Protection Services Manager.

National Assistance Act 1948

Section	Description	Proper officer
47	Officer authorised to issue a certificate to enable a local authority to apply for a court order to remove a person from insanitary living conditions	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary

Governance Committee (Special), 17 February 2010

		Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer.
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National Assistance (Amendment Act) 1951

Section	Description	Proper officer
48	Amends section 47 of the National Assistance Act 1948 (as above) to enable a local authority to apply for a court order to remove a person from insanitary living conditions without giving notice of intention to apply for the order.	As above

Public Health Act 1961

Section	Description	Proper officer
37	Officer authorised who may cause verminous articles to be disinfected or destroyed.	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts (PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer. Public Protection Services Manager.

Local Government Act 1972

Section	Description	Proper officer
83(1)-(4)	Officer to whom persons elected to any of the following offices of the Council shall make declaration of acceptance of office: mayor, deputy mayor, councillor	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
84	Officer to whom a person elected to any office under the Council may give written notice of resignation	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
88(1)	Receiving notice of casual vacancy in office of councillor	Chief Executive (Assistant Chief

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Section	Description	Proper officer
		Executive Legal & Democratic Services)
88(2)	Officer who may convene a meeting of the Council for the election to fill a vacancy	Chief Executive (Any Group Director)
89(1)(b)	Officer who may receive notice in writing of a casual vacancy in the office of councillor from two local government electors	Chief Executive Assistant Chief Executive Legal & Democratic Services
100B(2)	Officer who may think fit to exclude from reports open to inspection parts relating to items during which the meeting is likely not to be open to the public	Democratic Services Manager Committee Administration Manager
100B(7)(c)	Officer who may think fit to supply to the press additional material supplied to members of the Council in connection with items of business to be discussed	Assistant Chief Executive Legal & Democratic Services Head of Legal Services
100C(2)	Officer responsible for preparing a written summary of those parts of the committee proceedings which disclose exempt information	Democratic Services Manager Committee Administration Manager
100D(1)(a) and (5)(a)	Officer responsible for identifying background papers and compiling list of such documents	Democratic Services Manager Committee Administration Manager
100F(2)	Officer making decision as to documents disclosing exempt information which are not required to be open to inspection by council members	Chief Executive Assistant Chief Executive Legal & Democratic Services
115	Officer to whom all officers shall pay monies received by them and due to the local authority	Group Director Finance and Commerce Head of Financial Services
146(1)	Officer authorised to produce a statutory declaration specifying securities and verifying name change of authority	Group Director Finance and Commerce Head of Financial Services
210(6) and (7)	Officer in whom power in respect of a charity will vest as at 1 April 1974	Assistant Chief Executive Legal & Democratic Services Head of Legal Services
225(1)	Officer with whom documents may be deposited pursuant to law to make notes or	Assistant Chief Executive Legal &

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Section	Description	Proper officer
	endorsements and give acknowledgements or receipts	Democratic Services Head of Legal Services
229(4) and (5)	Officer who shall certify that a document is a photographic copy of a document in the custody of the Council	Assistant Chief Executive Legal & Democratic Services Head of Legal Services
234(1)	Officer who may authenticate documents	Assistant Chief Executive Legal & Democratic Services Head of Legal Services
236(9)	Officer responsible for sending certified copies of bylaws to appropriate bodies	Assistant Chief Executive Legal & Democratic Services Head of Legal Services
238	Officer who shall certify copies of bylaws as true copies	Assistant Chief Executive Legal & Democratic Services Head of Legal Services
248(2)	Officer who shall keep the roll of freemen of the borough	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
Para 4(2)(b) of Part I of Schedule 12	Officer who may sign a summons to council meetings	Democratic Service Manager Committee Administration Manager
Para 4(3) of Part I of Schedule 12	Officer who may receive notice from a member of address to which a summons to a meeting is to be sent	Democratic Service Manager Committee Administration Manager
Para 25(7) of Part II of Schedule 14	Officer who may certify copies of resolutions passed under the Public Health Acts 1875 to 1925 as true copies for production in legal proceedings	Assistant Chief Executive Legal & Democratic Services Head of Legal Services

Local Government Act 1974

Section	Description	Proper officer
30(5)	Officer responsible for arranging publication in newspapers of notice of Local Commissioner's report on investigation of a complaint	Democratic Services Manager Committee Administration Manager

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Local Government (Miscellaneous Provisions) Act 1976

Section	Description	Proper officer
41	Officer responsible for certifying copies of resolutions, minutes and other documents	Democratic Services Manager Committee Administration Manager

Local Government (Miscellaneous Provisions) Act 1982

Section	Description	Proper officer
Para 13(6) of schedule 3	Certification, for legal proceedings, of copy of any regulations made by the appropriate authority	Assistant Chief Executive Legal & Democratic Services Head of Legal Services

Representation of the People Act 1983

Section	Description	Proper officer
8	Officer acting as registration officer for registration of parliamentary and local government electors	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
35	Officer acting as returning officer for council elections	Chief Executive (Assistant Chief Executive Legal & Democratic Services)

Building Act 1984

Section	Description	Proper officer
78(8)	Officer responsible for taking immediate action in relation to dangerous buildings	Building Control Manager

Public Health (Control of Diseases) Act 1984

Section	Description	Proper officer
11	Officer to be informed of a notifiable disease or food poisoning	The Council hereby appoints any person for the time being employed by the North East London Health Protection Unit as Consultant in Communicable diseases (CCDC) or by the North East London Primary Care Trusts

Governance Committee (Special), 17 February 2010

Section	Description	Proper officer
		(PCTs) as Consultant in Public Health Medicine (CPHM) for the authority's area as proper officer.
18	Officer responsible for furnishing information with regard to notifiable diseases or food poisoning	As above
20	Officer empowered to prevent someone working in order to stop spread of disease	As above
21	Officer empowered to exclude a child from school if the child is liable to convey a notifiable disease	As above
22	Officer responsible for maintaining a list of day pupils at school having a case of notifiable diseases	As above
24	Officer responsible for ordering that infected articles not be sent to any laundry	As above
29	Officer responsible for letting of house or room after recent case concerning a notifiable disease	As above
31	Officer responsible for ordering disinfection of premises	As above
32	Officer responsible for ordering a person removed from an infected house	As above
36	Officer who may issue certificate stating that a person is believed to carry an organism capable of causing a notifiable disease and that a medical examination is expedient	As above
40	Officer who may apply for a warrant to enter a common lodging-house and examine any person for a notifiable disease	As above
42	Officer who may certify a common lodging-house which has been closed to be free from infection	As above
43	Officer who may certify that a person who has died in hospital while suffering from a notifiable disease should not be removed from the hospital except to be taken directly to a mortuary or to be buried or cremated	As above
48	Officer responsible for ordering removal of body to a mortuary or for immediate burial	As above
59	Officer responsible for authenticating documents	As above
60	Officer responsible for serving notices and other documents	As above

Governance Committee (Special), 17 February 2010

Public Health (Infectious Diseases) Regulations 1988

Section	Description	Proper officer
Regulations 6, 8, 9 10 and Schedule 3 and 4		As above

Housing Act 1985

Section	Description	Proper officer
606(1) and (2)	Officer responsible for making reports on unfitness and clearance	Public Protection Services Manager

Local Elections (Principal Areas) Rules 1986

Rule	Description	Proper officer
44	Officer [to whom returning officer gives notice] giving public notice of name of successful candidate/s in Council elections	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
46	Officer to whom, after election, returning officer forwards ballot papers and related documents for safe custody	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
47	Officer whom court may order to produce ballot papers and related documents	Chief Executive (Assistant Chief Executive Legal & Democratic Services)
48	Officer responsible for retaining ballot papers and related documents for public inspection, prior to destroying the documents after a six month period	Election Services Manager

Local Government Finance Act 1988

Section	Description	Proper officer
114	Officer responsible for making financial report to the authority	Group Director Finance and Commerce Head of Financial Services

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Local Government & Housing Act 1989

Section	Description	Proper officer
2	Officer responsible for receiving deposit of list of politically restricted posts	Head of Human Resources

Local Government (Committees and Political Groups) Regulations 1990

Regulation	Description	Proper officer
8(1) and (5)	Officer to whom notice is delivered about the constitution of a political group, or the change or name of a political group	Democratic Services Manager Committee Administration Manager
9 and 10	Officer to whom notice is delivered about a councillor's membership of, or cessation of membership of, a political group	Democratic Services Manager Committee Administration Manager
13	Officer to whom the wishes of a political group are expressed	Democratic Services Manager Committee Administration Manager
14	Officer responsible for notifying a political group about allocations and vacancies of seats	Democratic Services Manager Committee Administration Manager

Environmental Protection Act 1990

Section	Description	Proper officer
149	Officer for discharging functions for dealing with stray dogs	Public Protection Services Manager
	Dogs Act 1871 and Dangerous Dogs Act 1991	Public Protection Services Manager
	Guard Dogs Act 1975	Public Protection Services Manager

Food Safety Act 1990

Section	Description	Proper officer
49	Officer authorised to sign any document that the Council, as food authority, is authorised or required to make under the Act	Public Protection Services Manager

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Party Wall etc. Act 1996

Section	Description	Proper officer
10(8)	Officer responsible for appointing a third surveyor where this becomes necessary	Head of Development & Building Control

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

Regulation	Description	Proper officer
3(1)	<p>Officer responsible for producing a written statement of all executive decisions made at a public or private meeting of Cabinet, including the information specified in regulation 3(2)</p> <p>This officer is the proper officer referred to in rule 18 of the Access to Information Procedure Rules set out in Part 4 of this constitution</p>	Democratic Services Manager Committee Administration Manager
4(1)	<p>Officer responsible for producing a written statement of all executive decisions made by an individual Cabinet member, including the information specified in regulation 4(2)</p> <p>This officer is the proper officer referred to in rule 20(c) of the Access to Information Procedure Rules set out in Part 4 of this constitution</p>	Democratic Services Manager Committee Administration Manager
5(1)	<p>Officer responsible for ensuring that a copy of the following documents is available for public inspection:</p> <ul style="list-style-type: none">the written statement referred to in regulations 3 and 4 abovepart or all of any report considered by the decision-maker and relevant to the decision made <p>This officer is the proper officer referred to in rule 6 of the Access to Information Procedure Rules set out in Part 4 of this constitution</p>	Democratic Services Manager Committee Administration Manager
6	<p>Officer responsible for compiling a list of background papers to the report referred to in regulation 5 above</p> <p>This officer is the proper officer referred to in rule 8 of the Access to Information Procedure Rules set out in Part 4 of this constitution</p>	Democratic Services Manager Committee Administration Manager
9(2)	<p>Officer responsible for making publicly available any report which an individual Cabinet member or member of staff intends to consider when making a key decision</p>	Democratic Services Manager Committee Administration Manager

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Regulation	Description	Proper officer
9(4)	Officer responsible for including a list of background papers for the report referred to in regulation 9(2) above and for making available copies of those papers where appropriate	Democratic Services Manager Committee Administration Manager
11(2)	Officer who may exclude whole or part of any report provided for public inspection under regulation 11(1), where the part excluded relates to a matter for which the proper officer considers a meeting is not likely to be open to the public This officer is the proper officer referred to in rule 11 of the Access to Information Procedure Rules set out in Part 4 of this constitution	Democratic Services Manager Committee Administration Manager
11(7)(c)	Officer who may supply to a newspaper a copy of any document supplied to Cabinet members, if he or she thinks fit	Democratic Services Manager Committee Administration Manager
12(1)	Officer responsible for publishing the information relating to key decisions specified in regulation 12(1) This officer is the proper officer referred to in rule 14 of the Access to Information Procedure Rules set out in Part 4 of this constitution	Democratic Services Manager Committee Administration Manager
15(1)	Officer responsible for doing the following where the inclusion of a matter on the forward plan is impracticable and the matter would be a key decision: <ul style="list-style-type: none"> • giving notice to the Chairman of the relevant overview and scrutiny committee • making that notice available for public inspection This officer is the proper officer referred to in rule 15 of the Access to Information Procedure Rules set out in Part 4 of this constitution	Democratic Services Manager Committee Administration Manager
17(3) and (4)	Officer responsible for determining whether compliance with regulations 17(1) or 17(2) would involve the disclosure of either exempt information or advice provided by a political adviser or assistant	Democratic Services Manager Committee Administration Manager
21(4)(a) and (b)	Officer who may form an opinion as to whether a document contains or is likely to	Democratic Services Manager

Governance Committee (Special), 17 February 2010

Regulation	Description	Proper officer
	contain information confidential information, exempt information or the advice of a political adviser or assistant	Committee Administration Manager

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

Regulation	Description	Proper officer
4(2)	Officer who publishes the number that is equal to 5 per cent of the number of local government electors for the authority's area	Election Services Manager

The Local Authorities (Standing Orders) (England) Regulations 2001

Regulation	Description	Proper officer
Paragraphs 5 and 6 of Part II of Schedule 1	Officer for receiving notification of proposed appointment of certain officers, notifying executive members of that proposed appointment and for receiving and notifying of objections to the proposed appointment This officer is the proper officer referred to in rules 9 and 10 of the Staff Employment Procedure Rules set out in Part 4 of this constitution	Head of Human Resources

Proper officer functions referred to in guidelines issued by the Secretary of State under section 38 of the Local Government Act 2000 and set out in Part 4 of this constitution

Rule	Description	Proper officer
<i>Access to Information Procedure Rules</i>		
17	Officer who may, when requested to do so on behalf of an overview and scrutiny committee, require Cabinet to submit a report to the Council within such reasonable time as the committee specifies	Democratic Services Manager Committee Administration Manager
<i>Executive Procedure Rules</i>		
2(e)	Officer who may place an item on the agenda of the next available meeting of the Cabinet for consideration, when requested to do so by the Leader or any other member of the Cabinet	Democratic Services Manager Committee Administration Manager
<i>Overview and Scrutiny Committee Procedure Rules</i>		
7	cer who may call a meeting of an overview and scrutiny committee meeting if he or she considers it necessary or appropriate.	Democratic Services Manager Committee Administration Manager

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Rule	Description	Proper officer
9	Officer who may place an item on the next available agenda of an overview and scrutiny committee upon receiving notice from any member of the committee	Democratic Services Manager Committee Administration Manager
11(a)	Officer to whom an overview and scrutiny committee must submit any report containing recommendations on proposals for policy development, if the committee wishes the Cabinet to consider the report	Democratic Services Manager Committee Administration Manager
12(b)	Officer to whom: <ul style="list-style-type: none">• an overview and scrutiny committee must submit any report relating to a matter for which an individual Cabinet member has delegated decision-making power• the individual Cabinet member must provide a copy of his or her written response to the overview and scrutiny committee's report	Democratic Services Manager Committee Administration Manager
14(b)	Officer responsible for informing a member or member of staff that he or she is required to attend an overview and scrutiny committee, where the Chairman has informed the proper officer that such attendance is required	Democratic Services Manager Committee Administration Manager

The Local Democracy, Economic Development and Construction Act 2009

Section	Description	Proper officer
31	Officer responsible for promoting and providing support and guidance to Overview & Scrutiny Committees and its Members	Democratic Services Manager

Notes on the proper officer functions

- The Chief Executive may sign any notice, order or other document that the Council is authorised or required to give, make or issue. The Chief Executive may not exercise this power if:
 - it would require him or her to undertake a statutory or professional function that he or she is not qualified to undertake
 - the Council has designated a proper officer (other than the Chief Executive) responsible for signing the notice, order or document in question.
- The Chief Executive shall be the proper officer in respect of any statutory functions not referred to in this constitution.

Governance Committee (Special), 17 February 2010

- In the absence of the Chief Executive, any Group Director and the Assistant Chief Executive, Legal and Democratic Services shall be empowered to act, where legally permissible.

Functions of Statutory Officers

1 Functions of the Head of Paid Service

- (a) The Head of Paid Service may, where appropriate, report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of staff required for the discharge of functions and the organisation of staff.
- (b) The Head of Paid Service may not be the Monitoring Officer but may be the Chief Finance Officer if a qualified accountant.
- (c) Where he or she is consulted by the Monitoring Officer or Chief Finance Officer, the Head of Paid Service will provide that officer with an opinion as to whether decisions of the Executive or staff are in accordance with the budget and/or policy frameworks.

2 Functions of the Monitoring Officer

- (a) To maintain an up-to-date version of the constitution and ensure that it is widely available for consultation by members, staff and the public.
- (b) After consulting with the Head of Paid Service and the Chief Finance Officer, to report to the full Council or to the Cabinet in relation to any function if:
 - (i) he or she considers that any proposal, decision or omission would give rise to unlawfulness, or
 - (ii) where a Local Commissioner has conducted an investigation to the proposal, decision or omission concerned, any proposal, 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) Conduct investigations as directed by the Standards Committee into potential breaches by members of the code of conduct or similar protocols and make reports and recommendations in respect of them to the Standards Committee. This function will also be carried out by Deputy Monitoring Officers.
- (d) To ensure that executive decisions, together with the reasons for those decisions and relevant staff reports and background papers are made publicly available as soon as possible.
- (e) To advise whether decisions of the Executive or staff are in accordance with the policy framework in consultation with the Head of Paid Service and the Chief Finance Officer, where appropriate.

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- (f) To provide advice on the scope of powers and authority to take decisions, maladministration (where first investigated by a Local Commissioner), financial impropriety, probity and budget and policy framework issues to all councillors.
- (g) The Monitoring Officer cannot be the Head of Paid Service or the Chief Finance Officer.

3 Functions of the Chief Finance Officer

- (a) After consulting with the Head of Paid Service and the Monitoring Officer, to report to the full Council or to the Cabinet 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) To have responsibility for the administration of the financial affairs of the Council.
- (c) To contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) To provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget framework issues to all councillors and will support and advise councillors and staff in their respective roles.
- (e) To advise whether decisions of the Executive or staff are in accordance with the budget framework in consultation with the Head of Paid Service and the Monitoring Officer, where appropriate.

The Monitoring Officer, Chief Finance Officer and Chief Education Officer are each responsible for designating the post of the member of staff who will serve as his or her deputy officer.



**GOVERNANCE
COMMITTEE**

REPORT

17 FEBRUARY 2010

Subject Heading:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 4: Executive
Procedure Rules

CMT Lead:

Christine Dooley, Assistant Chief
Executive/Monitoring Officer

Report Author and contact details:

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Policy context:

The Council's Constitution is being
reviewed prior to the introduction of new
Executive arrangements in May 2010

Financial summary:

There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

The text of the revised Executive Procedure Rules is appended.

The Working Group have not identified any issues to refer to this Committee for to
consideration in detail.

RECOMMENDATIONS

- 1 That the Committee consider what, if any, changes are to be made to the draft text of the Executive Procedure Rules.
- 2 That the draft, as (if) amended, be approved as the revised Executive Procedure Rules.
- 3 That the Committee **RECOMMEND** to Council that the revised Executive Procedure Rules be adopted.

6 Executive Procedure Rules

1. Rules

This records the rules made by the Leader governing meetings of the Cabinet and the discharge of Executive functions by himself, the Cabinet and Cabinet Members. It should be noted that Executive decisions may also be delegated elsewhere e.g. to officers.

2. Role

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

3. Form and Composition

The Executive will take the form of a Cabinet consisting of the Executive Leader together with at least 2, but not more than 9 Councillors appointed to the Cabinet by the Leader.

4. Meetings of the Cabinet

- (a) Meetings of the Cabinet shall be held on such dates and at such times and venues as the Leader shall decide.
- (b) The Proper Officer will summon all Members of the Cabinet to meetings by sending an agenda and accompanying papers to each Cabinet Member and by publishing the Agenda in accordance with any statutory requirements.
- (c) The meeting or part of a meeting must be held in public where the Leader, reasonably believes that one of the following circumstances apply:
 - 4.c.i. A decision made will be a key decision; or
 - 4.c.ii. A matter that is included in the Forward Plan or is the subject of a notice given under Regulation 15 (exception to inclusion on the forward plan) is likely to be discussed; and
 - 4.c.iii. The decision on the matter is likely to be made within 28 days; and
 - 4.c.iv. An officer who is not a political assistant will be present at the discussion

5. Portfolios and responsibility of functions

The Members of the Cabinet shall have the portfolios designated by the Leader. The Leader will maintain a list and notify this list to the Proper Officer setting out what individual members of the Cabinet, committees of the Cabinet, officers or joint arrangements are responsible for the exercise of particular Executive functions.

6. The agenda for Cabinet meetings

The agenda for each meeting of the Cabinet will comprise:

- (a) The minutes of the previous meeting for approval and signing
- (b) Declarations of interest, if any
- (c) An item referred for consideration by Cabinet as the result of an overview and scrutiny committee upholding the requisition of an Executive Decision by Cabinet or by and individual Cabinet Member.
- (d) An item placed on the agenda by the Proper Officer where the full Council have resolved that an item be considered by the Cabinet at its next available meeting.
- (e) An item placed on the agenda by the Proper Officer within two months of a relevant overview and scrutiny committee referring an item for consideration by the Cabinet.
- (f) An item that the Leader or any other member of the Cabinet has required the Proper Officer to place on the agenda of the next available meeting for consideration.
- (g) An item placed on the agenda of the next available meeting of the Cabinet by the Proper Officer at the request of a Champion. That Champion shall be invited to attend the meeting and shall be allowed to speak to it.
- (h) Any item that the Leader has agreed at the request of any member of the Council will be considered at the next available meeting of the Cabinet. The notice of the meeting will give the name of the member who asked for the item to be considered. This member will be invited to attend the meeting and will be allowed to speak. However, there may only be up to two such items per Cabinet meeting.

7. Quorum

The quorum for a meeting of the Cabinet is three Members.

8. Chairing

If the Leader or Deputy Leader is not present or able to preside, the Cabinet shall elect another Member to preside for that meeting or item.

9. Attendance and speaking

- (a) All members of the Council may attend meetings of the Cabinet.
- (b) Without prejudice to the powers of the person presiding at the meeting to control debate as chairman, the following rights of address apply:
 - (i) Members of the Cabinet are entitled to speak at any meeting on any matter.

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- (ii) Any Group Leader who is not a member of the Cabinet (or a member nominated by him) may speak on any item before the Cabinet.
 - (iii) Champions in accordance with Rule 14(b) below
 - (iv) Any other member may speak only with the consent of the person presiding.
- (c) For the avoidance of doubt and in the interests of orderly debate, the person presiding has discretion to limit the amount of time, and the number of times, that any member may speak on a particular item.
- (d) The person presiding at the meeting has discretion to permit one or more members of the public to address the Cabinet on a matter on the Agenda provided he is satisfied that to do so will assist the Cabinet in coming to a decision on that matter. In giving such permission, the Chairman may attach such conditions as he thinks fit.

10. Conduct of Meeting

- (a) The person presiding at the meeting shall have power to exercise the powers conferred on the Mayor in relation to the conduct of meetings of the Council. In any conflict between these rules and those of Council these rules shall prevail.
- (b) The person presiding may vary the order of the agenda where it is necessary to do so for the proper conduct of the business of the meeting. Where the person presiding is of the opinion that there is insufficient information available to the Cabinet to enable a proper decision to be reached, consideration of the report in question may be deferred to a future meeting.

11. Private meetings of the Cabinet

Cabinet meetings will be held in public save where there would otherwise be a disclosure of confidential or exempt information within the meaning of the Local Government Act 1972 as amended.

12. Consultation

All reports to the Cabinet from any member of the Cabinet or a member of staff on proposals relating to the budget framework and the policy framework must contain details of the nature and extent of consultation with stakeholders and relevant overview and scrutiny committees, and the outcome of that consultation, if any. 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.

13. Conflicts of interest

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct set out in Part 5 of this constitution.
- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Members' Code of Conduct.

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- (c) If the exercise of an Executive function has been delegated to an individual member or a member of staff, 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.

14. Key decisions

A key decision is an Executive decision which is likely

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates and for this purpose "significant" is defined as

Revenue Expenditure/Savings

- (i) over £500,000 or in excess of 10% of the gross controllable composite budget at Head of Service/ Assistant Chief Executive level
- (ii) the 10% calculation will exclude a de minimis level of £250,000 and therefore no decision under £250,000 will be a key decision
- (iii) a single revenue virement in excess of £500,000

Capital Expenditure

- (i) a capital scheme in excess of £500,000 expenditure
- (ii) a single virement in excess of £500,000, or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority

In determining the meaning of "significant", regard must be had to any guidance issued by the Secretary of State.

- (c) A decision maker may make a key decision only in accordance with the requirements of the Access to Information Procedure Rules set out in Part 4 of this constitution.
- (d) A key decision is recorded and published on the Council's website and is published to members by way of a weekly Calendar Brief

15. Forward Plan

The Executive Leader must instruct the Proper Officer to publish a document stating the following:

- (i) That key decisions are to be made on behalf of the local authority;
- (ii) That a "Forward Plan" containing particulars of the matters in respect of which those decisions are to be made will be prepared monthly by the authority;

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- (iii) That a Forward Plan will contain details of the key decisions likely to be made by the authority for the four month period following publication of the forward plan;
- (iv) That each current Forward Plan may be inspected at all reasonable hours and free of charge at the local authority's offices;
- (v) That each Forward Plan contains a list of the documents submitted to the decision makers for consideration in relation to the matters in respect of which decisions are to be made;
- (vi) The address from which copies of listed documents are available;
- (vii) That other relevant documents may be submitted to the decision-makers'
- (viii) The procedure for requesting details of any such documents as they become available.
- (ix) The dates in each month in the following 12 months on which each Forward Plan will be published and available at the authority's offices.
- (x) The document must be published in at least one local newspaper annually between 14 and 21 days before the first Forward Plan of that year comes into effect.

16. Recording of Executive decisions made by individuals

- (a) As soon as reasonably practicable after an individual Executive decision has been made, the Proper Officer shall produce a written statement in respect of that decision which includes:
 - (i) A record of that decision;
 - (ii) A record of the reasons for that decision;
 - (iii) Details of any alternative options considered and rejected at the time;
 - (iv) A record of any conflict of interest or of any dispensation granted
- (b) After a private meeting or a public meeting of a decision making body at which an Executive decision has been made; after an individual member has made an Executive decision or after an officer has made a key decision the Proper Officer shall ensure that:
 - (i) Any records prepared in connection with and
 - (ii) Any report considered shall be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the authority.

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17. Executive decision-making processes

1. Key decisions may be taken only if due notice has been given of them in the Forward Plan unless the procedure for taking decisions without due notice has been followed.
2. Key decisions may be taken by Cabinet, by individual members of Cabinet or Chairmen of area committees or by officers acting in accordance with powers delegated generally or for specific purposes.
3. Executive decisions that are not key decisions may be taken by officers as well as by Cabinet, individual Cabinet members or area committee chairmen, in accordance with powers delegated generally or for specific purposes.
4. A list of all Executive decisions (whether or not key decisions) taken by members and of key decisions taken by officers in the preceding week will normally be published in the weekly Calendar Brief but where circumstances so require a supplementary Calendar Brief may be issued at any time.
5. No key decision shall be acted upon until either the deadline for submission of a requisition has passed without one being submitted, or any requisition submitted has been disposed of.
6. Where an Cabinet Member or Officer receives a report, which they intend to take into consideration when making the key decisions, they must not make that decision until the report has been available for public inspection for at least five clear days.
7. The Cabinet Member or Officer must ensure that the Proper Officer makes the report (and a list and copies of Background Papers) available for public inspection as soon as reasonably practicable after the Cabinet Member or Officer receives it.
8. Where a report has been submitted to an Cabinet Member or Officer with a view to it being considered by him when he makes a key decision, the person submitting the report must, as soon as reasonably practicable, supply a copy to the Chairman of every relevant Overview and Scrutiny Committee

18. Action where a key decision has not been shown on the Forward Plan

- (a) A key decision that has not been shown on the Forward Plan shall be made only in exceptional circumstances.
- (b) Such a key decision shall be made only if the Chairman of the relevant overview & scrutiny committee signifies in writing that he is satisfied on the report of the member or officer responsible for making the decision that
 - (i) it was reasonable in all the circumstances for notice of need for the decision not to appear in the Forward Plan

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- (ii) there is urgency for the decision to be made that justifies its being dealt with immediately rather than awaiting processing in the normal way
 - (iii) there are no grounds for supposing that the decision would be likely to be called in if processed in the normal way
- (c) Where the Chairman so signifies, the decision may be made forthwith and implemented without delay, and shall not be liable to be called in under the procedure provided for in paragraph 17 of the Overview & Scrutiny Procedure Rules in Part 4 of the Constitution.

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**GOVERNANCE
COMMITTEE**

REPORT

17 FEBRUARY 2010

Subject Heading:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 4: Overview &
Scrutiny Procedure Rules

CMT Lead:

Christine Dooley, Assistant Chief
Executive/Monitoring Officer

Report Author and contact details:

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Policy context:

The Council's Constitution is being
reviewed prior to the introduction of new
executive arrangements in May 2010

Financial summary:

There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

The text of the revised Overview & Scrutiny Procedure Rules is appended.

There were no issues to which the Working Group wished to draw attention.

RECOMMENDATIONS

- 1 That the Committee consider the various issues referred to in the report and determine what, if any, changes are to be made to the draft Overview & Scrutiny Procedure Rules.
- 2 That the draft, as (if) amended, be approved as the revised Overview & Scrutiny Procedure Rules.
- 3 That the Committee **RECOMMEND** to Council that the revised Overview & Scrutiny Procedure Rules be adopted.

Overview & Scrutiny Committee Procedure Rules

1 Membership

All councillors (except members of the Cabinet) may be members of one or more Overview & Scrutiny Committees (OSCs). However, no member may be involved in scrutinising a decision in which he or she has been directly involved.

For the avoidance of doubt, no Member of an Area Committee exercising delegated executive authority shall be regarded as an executive Member unless they are a Member of the Cabinet.

2 General role of OSCs

Within their individual terms of reference, OSCs may:

(a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions or those of a partner authority (as defined for the purposes of the Local Government and Public Involvement in Health Act 2007) where relevant to the terms of reference of that OSC

(b) make reports and/or recommendations to the full Council and/or the Cabinet and/or any policy, joint or area committee and/or to any partner authority in connection with the discharge of any functions

In doing so the OSCs may record the views of members on that committee who are not members of the largest political group on the Council

(c) consider any matter affecting the area or its inhabitants

(d) exercise the right to call-in for consideration, decisions made but not yet implemented by the Cabinet

(e) from time to time review previous decisions of Cabinet or of the committee in relation to strategic policy issues as part of the Continuous Improvement process.

(f) Consider matters referred to them by individual Members using the Councillor Call for Action process (see paragraph 9 following).

3 Specific functions of OSCs

(a) Policy development and review

OSCs may:

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- (i) assist in the development of the 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) encourage and enhance community participation in the development of policy options
- (iv) inquire of:
 - (a) members of the Cabinet, the Chief Executive, Group Directors, Assistant Chief Executive, Assistant Directors and Heads of Service (who may involve other staff as appropriate)
 - (b) appropriate members and/or staff of partner authorities about their views on issues and proposals affecting the area
- (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**

OSCs may:

- (i) review and scrutinise the decisions made by and performance of the Cabinet and/or council staff both in relation to individual decisions and over time. In reviewing decisions made by and the performance of council staff, it is expected that members will direct initial inquiries to the Chief Executive, Group Directors, Assistant Chief Executive, Assistant Directors and appropriate Heads of Service
- (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas
- (iii) inquire of members of the Cabinet and/or the Chief Executive, Group Directors, Assistant Chief Executive, Assistant Directors and Heads of Service 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) inquire of relevant partner authorities (as defined in the Local Government & Public Involvement in Health Act 2007) about their decisions and performance in relation to matters:
 - (a) falling within the scope of the National Health Service Act 2006 and any re-enactment thereof

(b) relating to the Local Area Agreement

- (v) make recommendations to the Cabinet, Council and/or partner authorities arising from the outcome of the scrutiny process
- (vi) review and scrutinise the performance of partner authorities and other public bodies in the area and invite reports from them by requesting them to address the OSC and local people about their activities and performance
- (vii) question and gather evidence from any other person (with their consent)
- (viii) Establish Topic Groups

The topic group must report back to the OSC which established it immediately after their first meeting with the group's suggested, detailed terms of reference for confirmation. The Committee is entitled to alter the terms of reference if it sees fit and to ask non-Members of the Committee to join the topic group. There is no requirement for topic groups to accord to the political balance rules or routinely be open to the public or non-Members of the topic group.

- (ix) Establish Groups, to be known as "CCA Groups", in response to Councillor Calls for Action pursuant to the Local Government & Public Involvement in Health Act 2007

(c) **Work programme**

The OSCs will be responsible for setting their own work programme.

(d) **Annual report**

OSCs must report annually to full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

4 Co-opted members

Subject to paragraphs 5 and 6 following, each OSC or sub-committee shall be entitled to recommend to Council the appointment of people as non-voting members (as defined in section 13 of the Local Government and Housing Act 1989).

5 Co-opted members and teacher representatives on Children's Services OSC

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- (a) The Children's Services OSC (**Informative: this is the statutory "Education" OSC**) must include in its membership the following co-opted members:

- (i) one Church of England diocese representative
- (ii) one Roman Catholic diocese representative
- (iii) three parent governor representatives (elected by all governors in each of the three sectors of education)

Each of these appointees has statutory rights to attend and vote at meetings of the OSC at which education matters are discussed.

- (b) The Children's Services OSC may also invite local teacher unions and professional association representatives to nominate, in each municipal year, two teacher representatives (one primary sector representative and one secondary sector representative).

6 Co-opted members on the Crime & Disorder Committee

The Crime & Disorder Committee may co-opt members in accordance with the provisions of Regulation 3 of the Crime and Disorder (Overview and Scrutiny) Regulations 2009.

7 Meetings of the committees

There shall be at least four ordinary meetings of each OSC in each year. In addition, extraordinary meetings may be called from time to time as and when appropriate. An OSC meeting may be called by the Chairman of the relevant OSC, by half the whole number of members of the committee or by the proper officer if he or she considers it necessary or appropriate.

8 Quorum

The quorum for an OSC shall be as set out for committees in rule 4 of the Committee Procedure Rules in Part 4 of this constitution.

Co-opted Members – whether or not having voting rights – shall be taken into account when calculating the quorum of a Committee.

9 Councillor Calls for Action

- (i) Any member –
 - (a) of an OSC may refer to that Committee any matter which is relevant to the functions of that Committee; and
 - (b) of the Council may refer to an OSC any local government matter which is relevant to the functions of that Committee.

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- (ii) Any member of the Council who is not a member of the Crime & Disorder Committee may refer any local crime and disorder matter to that Committee.

The proper officer shall include any matter referred in accordance with either (i) or (ii) above in the agenda for a meeting of the relevant Committee and the Chairman shall ensure that it is discussed at that meeting.

10 Policy review and development

- (a) The role of the OSCs in relation to the development of the Council's budget and policy framework is set out in detail in the Policy Framework Procedure Rules set out in Part 4 of this constitution.
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy framework or budget framework, OSCs may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- (c) OSCs may hold inquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration.

11 Reports to Council and Cabinet

- (a) Once it has formed recommendations on proposals for development, the OSC will prepare a formal report and submit it to the proper officer for consideration by the Council or by the Cabinet as appropriate.
- (b) If an OSC cannot agree on one single final report to the Council or Cabinet as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.
- (c) As soon as possible after the OSC has prepared the report, the proper officer shall serve a copy of it upon the relevant Cabinet Member.
- (d) The Council or Cabinet must consider the report of the OSC within two months of it being submitted to the proper officer.
- (e) Reports of OSCs referred to the Cabinet shall be considered by the Cabinet within two months of the meeting of the OSC at which its report and recommendations are agreed.

12 Reports to partner authorities

Where an OSC's report relates to a local improvement target which—

- (i) relates to a relevant partner authority, and
- (ii) is specified in a local area agreement of the authority

that Committee shall comply with the requirements of section 21C of the Local Government & Public Involvement in Health Act 2007.

13 Rights of OSC members to documents

- (a) In addition to their rights as councillors, members of OSCs have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this constitution.
- (b) Nothing in this rule prevents more detailed liaison between the Cabinet and OSC as appropriate depending on the particular matter under consideration.

14 Members and staff giving account

- (a) Any OSC or sub-committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any individual Cabinet member, the Chief Executive, a Group Director and/or Assistant Chief Executive, Assistant Director and Head of Service (who may involve other staff as appropriate) to attend before it to explain, in relation to matters within their remit:
 - (i) any particular decision or series of decisions
 - (ii) the extent to which the actions taken implement Council policy, and/or
 - (iii) their performance

and it is the duty of those persons to attend if so required.

- (b) Where any member or member of staff is required to attend an OSC under this provision, the Chairman of that committee will inform the proper officer. The proper officer shall inform the member or member of staff in writing giving at least seven working days' notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the member or member of

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staff concerned will be given sufficient notice to allow for preparation of that documentation.

- (c) Where, in exceptional circumstances, the member or member of staff is unable to attend on the required date, then the OSC shall in consultation with the member or member of staff arrange an alternative date for attendance to take place within a maximum of ten days from the date of the original request.

15 Attendance by Cabinet Members

- (a) A member of the Cabinet may attend any meeting of an OSC. Subject to (b) below, where a matter before the committee relates to an issue within the portfolio of that Cabinet member, he or she may address the committee about it unless to do so would breach any provision of the Members' Code of Conduct or any rule of law.
- (b) Where a decision of the Cabinet or of a Cabinet Member has been called in pursuant to rule 18 following, the relevant Cabinet Member or Members may attend the meeting at which the requisition is considered in order to explain the reasons for the decision and to respond to the decision, notwithstanding that the Cabinet Member has a prejudicial interest (which must be declared at the outset of the meeting). The Cabinet Member must, however, leave the meeting before the committee deliberates upon the matter and reaches a decision.

16 Attendance by others

An OSC may invite people other than those people referred to in paragraphs 14 and 15 above to address it, discuss issues of local concern and/or answer questions, such as residents, stakeholders and members and staff in other parts of the public sector.

17 Call-in ("requisition") procedure

- (a) All decisions of Cabinet and individual Cabinet members, and all key decisions taken by staff or area committees, will be notified weekly to all members, who shall be entitled to requisition that decision. Notification will be by the weekly Calendar Brief (or, where necessary, by supplementary Calendar Brief) to all members, indicating the latest date for submission of a requisition.
- (b) If the Chief Executive is notified of a requisition of a decision shown on that notification within three working days of the publication in Calendar Brief (or any supplementary Calendar Brief) of a decision, then (subject to (h) following) that decision shall not be acted upon but shall be submitted to the next OSC meeting, or one convened for the purpose, for determination.

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- (c) At that meeting, the OSC may resolve to initiate either of the specific call-in procedures set out in rule 5 of the Policy Framework Procedure Rules or in rule 6 of the Budget Framework Procedure Rules.
- (d) Any requisition submitted under (b) above must be in writing and must be signed by:
 - (i) at least two members representing between them more than one group (and may include one or two members who are not attached to a group), or
 - (ii) at least one co-opted member and one member.

The requisition must state the grounds for the requisition.

- (e) Where a requisition relates to a matter falling within the purview of more than one OSC, it shall be referred to a joint meeting of both or all of those committees. A separate decision to uphold or not to uphold that requisition shall be taken by each of the participating committees. If any of the Committees decides to uphold the requisition, then the matter shall be referred back to the Council or Cabinet as appropriate.

In the remainder of this paragraph the term “committee” includes two or more committees meeting jointly as well as individual committees.

- (f) The committee may uphold a requisition in its entirety or in part, or may decline to uphold a requisition (in which case the original decision shall stand and be able to be implemented forthwith).

Following the consideration of the matter by the committee, if the requisition submitted under (b) above is upheld, the matter shall be referred to either

- (i) The Council where the committee considers the matter is contrary or not wholly in accordance with the policy or budgetary framework, or otherwise
- (ii) The Cabinet

The report of the committee submitted to the Council or Cabinet shall incorporate the committee’s views on the requisition and any recommendations it wishes to put forward as to how the requisitioned decision should be reviewed or altered in order to address the points in the requisition that have been upheld.

The Committee’s views may be articulated by an officer’s report, by a minute of the Committee or by a summary of the minute.

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- (g) A requisition under (b) above shall be determined at the committee meeting by simple majority. In the case of joint meetings, each Committee shall vote separately.
- (h) The members calling in the decision may indicate at the time of submitting any requisition that it is “holding” requisition, to permit informal discussion with the relevant Cabinet member or the Chairman of the relevant Committee, as the case may be, as to the merits of the decision. Time shall be of the essence when dealing with “holding” requisitions. A “holding requisition” shall be treated as withdrawn if, eight clear days having passed from the publication of the decision, both members have not confirmed by notice in writing to the Chief Executive that the requisition should be subject to the full requisition procedure provided for in the preceding paragraphs.
- (i) Any requisition may be withdrawn by the requisitioners at any time prior to it being disposed of.
- (j) For the avoidance of doubt, “notice given in writing” for the purpose of this Rule includes notice given by a requisitioner by fax or by email from an address or number recognised as associated with the member sending it, and shall be regarded as validly signed by both members if either an identical fax or email is received from both of them or one clearly associates him or herself with a submission by the other, and different members may use different methods of giving such notices.

18 Exception to the call-in (“requisition”) procedure

- (a) The call-in procedure set out above shall not apply where a decision being taken by Cabinet or an individual Cabinet member, or a key decision made by a member of staff or an area committee, 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 interests. 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.
- (b) The decision making person or body can only take an urgent decision and avoid the call-in procedures after obtaining agreement from the Chairman of the relevant OSC or OSCs that the decision be treated as urgent.

In the absence of the Chairman, the Vice Chairman, or if neither is able to act, then the Mayor, or in his/her absence the Deputy Mayor, may give that agreement.

- (c) Any agreement obtained under this provision shall be evidenced in writing.

- (d) The Leader of the Council will submit quarterly reports to Council on decisions taken by himself, Cabinet or individual Cabinet members, or key decisions made by a member of staff or area committees, pursuant to this rule in the preceding three months. The report will include the number of decisions taken and a summary of the matters in respect of which those decisions were taken.
- (e) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council by the proper officer with proposals for review if necessary.

19 The Party Whip

There shall be no Party Whip at a meeting of an OSC. "The Party Whip" is understood to mean "any instruction given by or on behalf of a political group to any Councillor who is a member of that group as to how that Councillor shall speak or vote before a OSC, or the application or threat to apply any sanctions by the group in respect of that Councillor should they speak or vote in any particular manner"

20 Procedure at OSC meetings

- (a) OSCs and any sub-committees shall consider the following business:
 - (i) minutes of the last meeting
 - (ii) declarations of interest
 - (iii) consideration of any matter referred to the committee for a decision in relation to call in of a decision
 - (iv) responses of the Leader or Executive to reports of the OSC
 - (v) the business otherwise set out on the agenda for the meeting.
- (b) Where the OSC conducts investigations (for example, with a view to policy development), the committee shall observe the following principles:
 - (i) 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
 - (ii) that those assisting the committee by giving evidence be treated with respect and courtesy
 - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

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- (c) Following any investigation or review, the committee or sub-committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

21 Restriction on appointment to Housing OSC

No member who has been appointed by the Council to the board of Homes in Havering shall be appointed to the overview & scrutiny committee responsible for scrutiny of the Council's housing management functions.

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**GOVERNANCE
COMMITTEE**

REPORT

17 FEBRUARY 2010

Subject Heading:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 4: Access to
Information Rules

CMT Lead:

Christine Dooley, Assistant Chief
Executive/Monitoring Officer

Report Author and contact details:

Ian Buckmaster, Committee
Administration Manager
01708 432431
ian.buckmaster@havering.gov.uk

Policy context:

The Council's Constitution is being
reviewed prior to the introduction of new
executive arrangements in May 2010

Financial summary:

There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

This report seeks approval of the Access to Information Procedure Rules, which set out the Council's policy for dealing access to the information used in the preparation of reports etc for Council, Cabinet and Committees.

The Working Group have not identified any issues to refer to this Committee for to consideration in detail.

RECOMMENDATIONS

- 1 That the Committee consider the various issues referred to in the report and determine what, if any, changes are to be made to the draft text of Access to Information Rules.
- 2 That the draft, as (if) amended, be approved as the revised Access to Information Procedure Rules.
- 3 That the Committee **RECOMMEND** to Council that the revised Access to Information Procedure Rules be adopted.

Access to Information Procedure Rules

1 Scope

These rules apply to all meetings of the Council and its committees as set out in Articles 4, 6 and 7 of Part 2 of this constitution, and to public meetings of the Cabinet (together called meetings).

They are complementary to the statutory rights of access to information conferred by Sections 100A to H and schedule 12A of the Local Government Act 1972, as amended, the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, as amended, and the Standards Committee (England) Regulations 2008

2 Definition of “clear days”

In these Rules, “clear days” means a normal working day, excluding:

- the day of publication in hard copy
- the day of the meeting
- Saturday and Sunday
- Public or bank holidays
- Other days when the Council’s offices are closed (other than in circumstances that could not reasonably have been foreseen)

3 Access to agenda, minutes and reports before meeting

The Council will make a paper copy of the agenda, the minutes of the previous meeting and any subsequent special meeting(s) (if available) and such reports as are open to the public available for inspection at Havering Town Hall at least five clear days before the meeting.

The agenda, minutes and reports will be posted to the Council’s website as soon as possible after the paper copy is made available.

If a report is published later than the agenda or an item is added to the agenda, that report and any revised agenda will be made available to the public for inspection at the same time as it is sent to Members of the Council. Such agendas and reports will be added to the Council’s website as soon as possible. This rule does not apply to meetings of the Cabinet (because the law does not permit late or additional reports).

4 Supply of copies

The Council will supply to any person on request 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

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

A charge for postage and any other costs may be made for the supply of all such documents.

The agenda, draft minutes, minutes and reports of every meeting open to the public will be available on the Council's internet website (www.havering.gov.uk) and may be freely downloaded from there (subject to any copyright restrictions that may exist and shall be noted on the website where relevant).

5 Access to minutes etc. after meeting

The minutes of a meeting will not normally be available until they are published in unconfirmed form with the agenda for the following meeting.

Electronic copies of documents will be available on the Council's website. The Council reserves the right to place documents in an electronic archive from which copies will be made available on request.

6 Exclusion of access by the public to meetings

All Council meetings, including those of the Cabinet, will be open to the public but the Council reserves the right to exclude the public when entitled to do so by law if confidential or exempt information is to be considered (see the Appendix for categories of confidential and exempt information).

7 Application of rules to the Cabinet meetings

In general, these Rules apply to Cabinet Meetings other than those whose sole purpose is for members of staff to brief members.

8 Record of decisions of Cabinet

The law requires that, as soon as practicable after any meeting of the Cabinet, whether held in public or private, a record must be made of every decision taken at that meeting, including a statement of the reasons for each decision and of any alternative options considered and rejected at that meeting.

The minutes of a meeting will usually constitute this record of decisions.

9 Cabinet meetings relating to matters that are not key decisions

The Cabinet will decide whether meetings relating to matters that are not key decisions will be held in public or private. The general presumption will be in favour of meetings being held in public.

10 Decisions by individual Cabinet members, Area Committee chairmen or officers

In order to comply with the legal requirements, the following procedure will be followed for Key Executive Decisions to be taken by individual Cabinet Members (alone or jointly with one or more other Cabinet Members) and by officers (alone, or in consultation with Area Committee Chairman/men).

- 1 As soon as the need for a Key Decision has been identified, it must be included in the Forward Plan. The Decision must not be taken before the month indicated in the Forward Plan.
- 2 If the Decision relates to exempt information in its entirety, it may be taken at any time during the month indicated in the Forward Plan.
- 3 In all other cases, at least seven working days before the date on which the Decision is due to be taken, the author of the intended Decision must send a copy of it (in both hardcopy for signature and electronically, preferably in PDF format), clearly indicating the date on or after which the Decision may be taken:
 - In the case of a decision to be taken by an individual Cabinet Member (or jointly by two or more Cabinet Members), to that Member/those Members;
 - In the case of a decision to be taken by an officer in consultation with the Chairman/men of Area Committee(s), to the Chairman/men; or
 - In the case of a decision to be taken by a Group Director, Head of Service or Senior Manager having delegated authority, to that officer; and
 - In each case, a copy of the intended Decision must be sent electronically (preferably in PDF format) to the Democratic Services Manager. On receiving the intended Decision, the Democratic Services Manager will arrange for it to be posted to the Council's website.
- 4 Once the five clear day period before which the Decision cannot be taken has expired – or in the case of an exempt decision, on receiving it - the individual Cabinet Member(s) or officer may proceed to make the Decision.
- 5 When the Decision has been made, the signed, original Decision Form will be provided to the Democratic Services Manager for logging and, unless or to the extent that it is not, exempt, publication.

11 Overview and scrutiny committees' access to documents

(a) Rights to copies

Subject to rule 11(b) below, an overview and scrutiny committee (including any sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to

- (i) any business transacted at a meeting of the Cabinet, or
- (ii) any decision taken by an individual Cabinet member.

(b) Limit on rights

An overview and scrutiny committee will not be entitled to:

- (i) any document that is in draft form, or
- (ii) 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.

12 Additional rights of access for members

(a) 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 Cabinet and contains material relating to any business previously transacted at a meeting unless it contains exempt information falling within paragraphs 1 to 7 of the statutory categories of exempt information.

(b) 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 or under the control of the Cabinet which relates to any key decision unless rule 12(a) applies.

(c) Nature of rights

The members' rights set out in this rule are additional to any other right a member may have.

13 Decisions taken by an officer following consultation with the Chairman of the relevant committee

An officer may make a non-executive decision after consultation with the Chairman of a Committee to deal with issues which are within the terms of reference of the Committee concerned and are:

- Comparatively minor but nonetheless require Member level input
- Settling details once the Committee has approved an issue in principle
- Of such genuine urgency that there is not sufficient time to convene a meeting of the full committee

Such a decision is not subject to call-in; may be acted on as soon as it is signed; will be notified to members by way of Calendar Brief; and must be made by the completion and signature of the Consultation with Chairman form.

CONFIDENTIAL AND EXEMPT INFORMATION.

(a) 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.

“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.

(b) 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 below. The parties to a hearing will be able to remain throughout until the meeting adjourns to consider a decision.

Exempt information means information falling within the following categories:

Category	
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)
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

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	Category
6	Information which reveals that the authority proposes: (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment
7	Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime.

Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992
- (d) the Industrial and Provident Societies Acts 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993

Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.

Information which—

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of the above paragraphs, is exempt information 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.

The provisions of this legislation are modified in their application to meetings of the Cabinet and of the Standards Committee as follows:

Cabinet:

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, as amended

The Regulations provide for additional requirements in respect of key decisions. Generally, a meeting must be held in public where a key decision will be made or where there will be discussion of matters relating to a key decision to be made subsequently. Where a meeting is to be held in public there must be advance publication of agendas, reports and background papers for the meeting. Likewise, where key decisions are to be made by individuals the documents relating to these

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decisions must be available to the public. In general, the terms of the Regulations are identical to those of the 1972 Act and, in particular, the Regulations use the Act's definitions of exempt information..

Standards Committee:

The Standards Committee (England) Regulations 2008

The Regulations make provision as to public access to meetings and documents of standards committee proceedings. Where a sub-committee of a standards committee is considering an allegation against a member or a request to review a decision to take no action, there is no public right of access to the meetings or documents but the sub-committee is required to produce a written summary of its consideration of those matters, which is available to the public. Otherwise, the proceedings of standards committees and sub-committees of standards committees are to be open to the public in a manner similar to that in which other proceedings of local authorities are made open.

The 1972 Act applies to meetings of a standards committee or a sub-committee as if, after paragraph 7 of Schedule 12A, the following descriptions of exempt information were inserted—

- 7A.** Information which is subject to any obligation of confidentiality.
- 7B.** Information which relates in any way to matters concerning national security.
- 7C.** Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.



**GOVERNANCE
COMMITTEE**

REPORT

17 FEBRUARY 2010

Subject Heading:

REVIEW OF THE COUNCIL'S
CONSTITUTION – Part 4: Contract
Procedure Rules

CMT Lead:

Christine Dooley, Assistant Chief
Executive/Monitoring Officer

Report Author and contact details:

Ian Buckmaster, Committee
Administration Manager
01708 432431
ian.buckmaster@havering.gov.uk

Policy context:

The Council's Constitution is being
reviewed prior to the introduction of new
executive arrangements in May 2010

Financial summary:

There are no direct costs associated with
this review

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

This report seeks approval of the revised Contract Procedure Rules, which set out the procedures for managing the Council's contracts.

The Working Group have not identified any issues to refer to this Committee for to consideration in detail.

RECOMMENDATIONS

- 1 That the Committee consider the various issues referred to in the report and determine what, if any, changes are to be made to the draft text of the Contract Procedure Rules.
- 2 That the draft, as (if) amended, be approved as the revised Contract Procedure Rules.
- 3 That the Committee **RECOMMEND** to Council that the revised Contract Procedure Rules be adopted.

Contracts Procedure Rules

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Framework contracts	Schedule J
Consortia arrangements (where the London Borough of Havering is not a member)	Schedule K

1 **Introduction**

(a) **Purpose**

The purpose of these rules is to ensure that all Council contracts are awarded:

- in compliance with all relevant United Kingdom and European legislation including best value and EC procurement legislation
- to ensure probity
- to ensure value for money is obtained
- to maximise competition wherever possible
- in accordance with best practice
- to ensure a fair and transparent process
- in a way which demonstrates an audit trail with evidence that there was a fair process and value for money was obtained.

(b) Requirements

- (i) All contracts shall be awarded in accordance with these rules and the Financial Procedure Rules which are compulsory and with the relevant provisions of the Council's Procurement Framework. A contract is any order or purchase of goods, supplies, services or works.
- (ii) All contracts shall be awarded in accordance with all relevant United Kingdom and European legislation including best value and European procurement legislation.
- (iii) No contract may be awarded unless there is sufficient budget available for the goods, supplies, services or works being procured and appropriate delegated authority to award the contract.
- (iv) The person awarding the contract shall have a duty to ensure and demonstrate that the best value is obtained, having regard to the appropriate balance between quality and price.
- (v) Group Directors, Assistant Chief Executive, Assistant Directors and Heads of Service are responsible for ensuring that:
 - contracts are awarded in accordance with these Rules
 - all persons responsible for awarding contracts are familiar with the Council's Procurement Framework, familiarise themselves with its contents and attend relevant Council training as appropriate.
 - all contracts over £50,000 are recorded on the Contracts Register maintained by the Business Development Unit
 - all contracts over £50,000 shall have a nominated Contract Monitoring Officer

2 Contract Procedure

All contracts shall be let in accordance with the relevant procedure as set out in Schedules A to K based on the value of the contract.

3 Calculating the value of a contract

In calculating the value of the contract for the purposes of the competition requirement:

- (i) values are total lifetime contract values not annual values
- (ii) values exclude VAT
- (iii) values are to be aggregated – for example, if there is a recurring need on an annual basis for supplies
- (iv) An estimate shall be made of the total purchasing requirement/whole life costing/financial implications – for example, including ongoing maintenance and support costs. If there are variables which result in the estimate being a range of figures rather

than a single figure, then the highest figure in the range will be the value of the contract for the purposes of these Rules.

- (v) The valuation shall include the value of possible contract extensions and possible additional options.
- (vi) Where a contract is of indeterminate length the value of the contract shall be assessed on the basis of the maximum anticipated length of the contract.
- (vii) Where a contract is for a number of organisations and the Council is the lead authority, then the value of the contract shall be the total value of the contract for all the organisations. If the Council is not the lead authority then the value of the contract for the purposes of these Rules shall be the value of just this Council's proportion of the contract. It is a breach of these Rules to deliberately divide up contracts to evade the need to follow a more complex/lengthy procurement procedure or evade the requirements of European or UK legislative requirements.

4 European procurement requirements

(a) Thresholds

European procurement legislation shall be complied with for all contracts above the following thresholds:

Type of contract	Threshold
Services	£ 156,442
Supplies	£ 156,442
Works	£ 3,927,260

These thresholds will be revised every two years. The next revision will be January 2012.

(b) Procurement procedures

The relevant procedures set out in the Schedules to these Rules and in the Procurement Framework shall be followed for all contracts subject to European procurement rules.

5 Legal, procurement and technical support

(a) Consulting Business Development Unit

The Business Development Unit shall be advised at the outset on all contracts for a value of more than £50,000 and the advice of the Unit must

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be sought to confirm that there are not existing contracts for similar goods or services in order to ensure that the European thresholds are not inadvertently breached.

(b) **Notifying Assistant Chief Executive Legal & Democratic Services**

The Assistant Chief Executive Legal & Democratic Services shall be notified at the outset of all proposed contracts with a value of more than £156,000 in order to advise on applicability of EU rules, TUPE, best value and any other legislative requirements and to nominate a legal representative to the project team.

(c) **Notifying Technical Services & Surveying**

Technical Services & Surveying are to be notified of all proposed works contracts

6 Requirements in relation to TUPE

Where a contract award for services may result in Council or contractor staff being affected – for example, by possible redundancy, relocation or transfer to the successful tenderer – the advice of the Head of Exchequer Services (re pensions), Head of Human Resources and the Assistant Chief Executive Legal & Democratic Services must be obtained before commencement of the tender process. Details must be included in the pre-tender report to members referred to in rule 7.

7 Pre-tender report

- (a) All contracts with a value of more than £156,000 must be reported to the appropriate Group Director for approval to commence the tendering process

unless an exception set out in 7(c) applies. The report must set out:

- the likely total cost and budget provision
 - the appropriate European procurement route
 - the proposed tendering strategy and timetable
 - the project team
 - a summary of best value issues and any service improvement requirements
 - application of TUPE.
 - project risk assessment
- (b) Contracts within the terms of reference of the Pension Committee may be dealt with by that committee.
- (c) Contracts for the procurement of gas, electricity and water supplies for Council buildings including schools may proceed without a formal pre-

tender report with the approval of the Group Director, Finance & Commerce.

8 Tender process

(a) General

- (i) All tender processes shall be conducted in accordance with the requirements of these Rules (including the procedure set out in the relevant Schedule), the Financial Procedure Rules, European procurement rules (if applicable), the Procurement Framework.
- (ii) Where there is the need to initially assess the capability of tenderers to undertake a proposed contract or the list of potential tenderers exceeds 8, the relevant Head of Service may issue a Pre-Qualification Questionnaire to assess which potential tenderers should be included/ excluded provided that such PQQs are assessed using fair, appropriate and consistent evaluation criteria and that the process is fully documented
- (iii) The Invitation to Tender for all contracts over £60,000 shall include the following information:
 - a description of the services, supplies or works sought
 - the procurement timetable
 - rules for submitting tenders
 - pricing mechanism
 - the relevant terms and conditions of contract
 - the evaluation criteria including weightings
 - the Council's view on the applicability of TUPE
 - Any other information necessary to prepare tenders
- (iv) The lists of contractors maintained by Constructionline shall be preferred for the formation of shortlists of potential tenderers for all construction contracts with a value of less than £3,900,000 for buildings and roads maintained by the Council unless otherwise agreed by the relevant Group Director and the Assistant Chief Executive, Legal & Democratic Services

(b) Evaluation criteria

The award of all contracts shall be based on fair and appropriate evaluation criteria in accordance with the Procurement Framework and the European procurement rules (if applicable). Full and complete written records of the evaluation process must be maintained.

(c) Number of Tenders/Quotes

The minimum number of tenders or quotes to be sought shall be as set out in the relevant Schedule unless these Rules or the Assistant Chief Executive Legal & Democratic Services approves otherwise.

(d) Award

- (i) The tender or quotation accepted shall be the one which represents the best value for money for the Council overall, taking account of price, quality of service, risk to the Council and other benefits, as set out in the evaluation criteria chosen for the tender and as described in the Procurement Framework .
- (ii) For all contracts to which EU procurement rules apply all tenderers must be notified of:
 - The evaluation criteria
 - Their score using the criteria
 - The winning score
 - An explanation why the winning tender scored more highly than that tenderer's one
 - The identity of the winner of the contract
- (iii) For all other contracts with a value in excess of £60,000 all bidders must be notified of:
 - Their score in the evaluation
 - The winning score

9 Procedure for submission and opening of tenders

(a) Submitting tenders

Every invitation to tender shall state that no tender will be considered unless it is returned in plain, sealed packaging which bears the word "tender" followed by the contract name, reference number, if applicable, and closing date and time. The instructions shall clearly indicate that there must be no name or mark indicating the tenderer's identity.

(b) Returning tenders

- (i) All tenders with a likely value of more than £60,000 must be returned to the Business Development Unit, Mercury House, Mercury Gardens, Romford, RM1 3SL. Other tenders should be returned to the responsible Head of Service.
- (ii) Tenders shall be delivered to the place and by the time stated. Late tenders shall not be considered without the written approval of the Assistant Chief Executive Legal & Democratic Services which must set out the justification for the decision.

(c) Opening tenders

- (i) Tenders shall be kept secure and unopened until formal opening.
- (ii) All tenders for a particular contract shall be opened together at one time, in the presence of at least two members of staff not previously involved in the tender process. Where tenders are likely to have a value of more than £60,000, the two members of staff must consist of one representative of the Business Development Unit and one

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representative of the relevant Service. Where tenders are likely to have a value of less than £60,000, the two members of staff must consist of one representative of the relevant Group Director and one representative of the relevant Service.

- (iv) The details of the tenders and the tenderers shall be recorded by the staff opening the tenders on the pro forma in the Procurement Framework at Appendix A. Copies shall be sent to (or retained by)
- the relevant department
 - the Assistant Chief Executive Legal & Democratic Services
 - the Business Development Unit.
 - Internal Audit
 - Technical Services & Surveying (construction contracts only)

10 Conduct of negotiations

- (a) All negotiations shall be conducted in accordance with European procurement rules, if applicable.
- (b) The Assistant Chief Executive Legal & Democratic Services and the Group Director Finance & Commerce shall be advised of all contracts in excess of £156,000 that require negotiation before negotiations commence.
- (c) Negotiations shall be conducted by at least two senior members of staff, at least one of whom shall be either a Head of Service or a more senior officer. The relevant Group Director is responsible for the negotiations. If the value of the contract exceeds £1,000,000 then a senior member of the Assistant Chief Executive Legal & Democratic Services' staff should also be present at the negotiations.
- (d) Negotiations must be conducted, and full and proper records shall be kept, in accordance with the relevant section of the Procurement Framework

11 Awards in-house

- (i) Where there is an in-house team capable of performing the required services, the team may be invited to bid if such a bid is in accordance with the Procurement Strategy.
- (ii) An award may be made to an in-house team after competition, provided that:
- the in-house team has been evaluated as the most economically advantageous tender in accordance with the requirements set out in the Procurement Framework
 - the person making the award can demonstrate that the in-house team represents the best value in terms of quality and price.

12 Post Tender Reports

(a) Pre-award report

- (i) The results of the evaluation process for all contracts with a value of more than £156,000 and up to £5,000,000 except for contracts falling within the category set out in 12(b) below, must be reported to the appropriate Group Director for approval and award of the contract.

Contracts with a value of more than £156,000 and up to £5,000,000 except for contracts falling within the category set out in 12(b) below, must be reported to an individual Cabinet Member for approval and award of the contract

Contracts with a value of more than £10,000,000 must be reported to the Leader or Cabinet for approval and award of contract.

The report shall set out the details of all stages of the evaluation process and criteria, risk assessment and risk allocation, the results, and a recommendation as to the proposed award of the contract.

(b) Post-award notification

Works contracts in respect of the Council's buildings and assets where the total contract value is between £156,000 and £5,000,000 are awarded by Heads of Service or more senior staff (as provided for in the constitution Part 3, Section 3).

(c) Pension Committee

Contracts within the terms of reference of the Pension Committee may be dealt with by that Committee.

13 Council standard terms of contract

(a) General

- (i) All Council contracts with a value in excess of £2,000 shall be on the Council approved standard terms and conditions for that type of contract unless:

- the contract is let under an existing framework agreement which specifies the terms & conditions under which an individual contract can be let.
- The Council's standard terms and conditions are not appropriate for the particular contract.
- the Assistant Chief Executive Legal & Democratic Services approves otherwise.

- (ii) All Council contracts where the Council approved standard terms and conditions are not appropriate **must** be awarded on the basis of

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a written specification of the Council's requirements on contract terms and conditions approved by the Assistant Chief Executive Legal & Democratic Services in advance.

(b) Written requirements

Contracts above £60,000 shall include details of:

- (i) what is to be provided, (description, quality and quantity where relevant) and when
- (ii) payment provisions (amount and timing)
- (iii) the Council's standard conditions in relation to the following matters:
 - the time scale within which the contract is to be performed
 - no sub-contracting or assignment without prior consent
 - sub-contractors to be appointed in accordance with these rules
 - sub-contractors to be paid within 30 days
 - the Council's insurance requirements
 - the Council's health and safety requirements
 - the Council's data protection and Freedom of Information requirements
 - the Council's equalities requirements
 - a right of access to relevant documentation, data and records of the contractor for monitoring and audit purposes
 - a right of termination for the Council
 - a requirement at the discretion of the Council for security for performance – for example, a bond, guarantee or retention sum
 - quality assurance requirements and consequences
 - implementation
 - Performance monitoring requirements.
 - Best value requirements
 - the Council's standard prevention of corruption clause
 - TUPE requirements.

(c) Contracts for construction works

All Council contracts for construction works with a total value of more than £10,000 shall be awarded on the basis of a written specification of the Council's requirements and the current conditions of:

- (i) the relevant standard form of JCT, or
- (ii) the standard form of ICE, or
- (iii) the standard form of PPC 2000
- (iv) the relevant form of NEC
- (v) the relevant framework agreement

whichever is appropriate, or another standard form of contract approved by the Assistant Chief Executive, Legal & Democratic Services.

14 British or other applicable European standards

All contract specifications shall include reference to appropriate British or European standards where such standards are current and appropriate.

15 Early Authorisation Approval

In the event that there is a need for a contract to commence prior to the completion of the formal contract documentation then a Group Director after consultation with the Assistant Chief Executive Legal & Democratic Services may authorise the issuing of an Early Authorisation Approval to the contractor. The Early Authorisation Approval shall include the following information:

- Work to be undertaken
- Terms & conditions (this can be by reference to other documents)
- Subject to completion of formal contract

16 Execution of contracts

(a) Contracts over £100,000 to be sealed

Contracts with a total value of more than £100,000 shall be executed under seal in accordance with Article 10.05 of the Constitution unless the Assistant Chief Executive Legal & Democratic Services approves otherwise. The Legal Document Execution Form must be duly completed by or on behalf of the relevant Head of Service or more senior staff prior to the contract being submitted for sealing.

(b) Contracts under £100,000

- (i) Unless the Assistant Chief Executive Legal & Democratic Services approves otherwise, contracts with a total value of less than £100,000 shall be executed by the signature of the duly authorised Head of Service or more senior staff as appropriate, in accordance with the functions delegated to staff under section 3 of Part 3 of this constitution.
- (ii) Contracts with a total value of less than £100,000 may be executed under seal where the Head of Service or Group Director and the Assistant Chief Executive Legal & Democratic Services deems this appropriate: for example, where the Council may wish to enforce the contract for more than six years after its end.

(c) Care & Consultancy Contracts

- (i) Contracts for the provision of personal social services to an individual (eg residential care) and educational placements may be signed by the relevant approved officer (as formally designated by the Head of Service or more senior staff and lodged with the Assistant Chief Executive Legal & Democratic Services) provided that the annual value of the contract does not exceed £200,000. If it will exceed £200,000 then the contract must be signed by the Assistant Chief Executive Legal & Democratic Services

- (ii) Contracts for consultancy services and specialist advice (other than those that form part of a larger contract or project) may be signed by the relevant Head of Service or more senior staff provided that the total value of the contract does not exceed £200,000. If it will exceed £200,000 then the contract must be signed by the Assistant Chief Executive Legal & Democratic Services

17 Records to be kept

(a) Retaining relevant documents

- (i) The Group Director shall be responsible for ensuring that there is a secure system of filing and storing all tender process documentation.
- (ii) All written records in relation to the award of contracts and the tender process, including supporting documentation, shall be maintained securely and safely by the Group Director in a properly identifiable filing system to be available for inspection by the Council's internal and external auditors, or other authorised member of staff, immediately upon request.
- (iii) All written records shall be maintained as follows:

contracts with a value between £5,000 and £60,000	three years after end of the contract
contracts with a value between £60,000 and £100,000	six years after the end of the contract
all sealed contracts and contracts with a value over £100,000	twelve years after the end of the contract

- (iv) The sealed original contract documents shall be retained by the Assistant Chief Executive Legal & Democratic Services in the Council's deeds' room for twelve years after end of the contract.

(b) Retaining copies of contracts

Once executed the Council shall retain one original of the complete contract documents, and one copy of the complete contract document shall be provided to the contractor. Where the contract is under seal, one original copy of the contract documents shall be sent to/retained by the Assistant Chief Executive Legal & Democratic Services for storage in the Council's deeds room and one copy shall be retained by the person awarding the contract, as well as one copy being provided to the contractor.

(c) Documents to be retained

- (i) The complete original set of the contract documents shall be retained including:
- the contract conditions
 - specification

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- evaluation criteria
 - invitation to tender
 - pricing schedule
 - contractor's tender submission
 - any pre-tender correspondence which affects the specification, pricing schedule or contract conditions
 - any post tender correspondence
 - the award letter, and
 - all documentation of all variations and extensions of the contract
- (ii) Where an exception to the competition financial thresholds applies, the following documents shall also be retained:
- the Competition Financial Thresholds Exceptions Approval Form signed by a Group Director
 - the contract and correspondence with the contractor
 - any evidence of how value for money was obtained – for example, alternative written or oral quotes.
- (iii) A complete check list of documents to be retained is included in the Procurement Framework at section E20. It is mandatory to retain all the documents listed if they formed part of the process.

18 **Contracts database**

(a) **Responsibility to maintain central register**

The Business Development Unit shall maintain a central register of all Council contracts with a value of more than £50,000.

(b) **Responsibility to notify contract to central register**

The person awarding the contract shall notify the Business Development Unit of the details of the contract by completing and e-mailing the pro forma set out in the Procurement Framework.

19 **Prevention of corruption**

(a) **General standards of conduct**

All persons involved in the award of contracts shall comply with Council guidance on conduct of staff [and with the Staff Code of Conduct when

issued by the Secretary of State] and shall not invite or accept any gift or reward or inducement which could influence them in any way in relation to the award or monitoring of any Council contract. High standards of ethical conduct are mandatory. Staff shall take steps to ensure that their behaviour could not lead to accusations of corruption. Corrupt behaviour is a criminal offence and will lead to criminal investigation and if proven, dismissal and a criminal record.

(b) **Declaring an interest**

Any person who has a pecuniary or other interest in any actual or potential Council contract must declare it in writing to the relevant Group Director. All hospitality, gifts or other inducements received shall be recorded in the hospitality register held by the relevant Group Director.

20 **Best value requirements**

All persons awarding contracts for services shall ensure that they can demonstrate that they have complied with the legislative requirements for best value. In addition to the requirements for the report to members set out in rules 7 & 12, the contract award report shall set out:

- how the legal duty to challenge, consult, compare and compete has been met
- how the contract award will meet the Council's statutory duty of economy, efficiency and effectiveness (i.e. best value)
- how continuous improvements in service provision will be maintained and monitored.

21 **Council corporate contracts and framework contracts**

(a) **Setting up corporate contracts**

Group Directors with the agreement of the Group Director, Finance & Commerce and the Assistant Chief Executive Legal & Democratic Services may set up corporate and/or framework contracts for goods services, supplies or works across the Council and other public sector bodies, eg stationery supplies. These shall be advertised and competitively tendered in accordance with the Council's competition and selection procedures set out in these rules and the Procurement Framework.

- (b) Where an appropriate corporate contract or select list is in place this shall be used wherever appropriate. The Group Director responsible for the corporate contract or select list shall issue guidance as to its use, after consultation with the Assistant Chief Executive Legal & Democratic Services and the Business Development Unit.

(c) **Reviewing corporate contracts**

Any corporate contract shall be reviewed regularly and shall be re-advertised re-tendered at least once every four years.

(d) **Setting up approved lists**

Group Directors may maintain approved lists of potential providers of services, supplies and works for contracts in Schedules A, B & C. These providers will not have been competitively tendered and use of providers on these lists is subject to the normal Council competitive tendering requirements set out in these Rules and the Procurement Framework.

22 **Contract extensions and variations**

(a) **Variations (non-construction work)**

Contract variations (ie alteration to the terms of the contract which do not alter the length of it) must comply with the following points:

- The nature of the variation has been approved by either the Business Development Unit or the Assistant Chief Executive Legal & Democratic Services.
- The variation must be in writing and the document will be completed (ie signed or sealed) in the same manner as the original contract unless otherwise provided for within the original contract.
- It must clearly set out which provisions in the original contract are being varied, the replacement provision and the date that the variation takes effect.
- Variations which are to be met from existing budget provisions may be agreed by Heads of Service or more senior staff.
- Variations which increase expenditure must have funding secured. Such variations will need to be agreed by a Form A Executive Decision.

(b) **Variations (construction work)**

Contract variations to construction contracts which alter the detailed design, method of construction, materials used, extent of the works or the timing of the works are permissible provided that:

- The variation is in writing and authorised in accordance with the variation provisions set out in the contract
- It can either be met from existing budget provisions or, if additional funding is required, that authority for the increased budget is obtained first

(c) **Extensions**

- (i) Extensions to the duration of existing contracts are generally not permitted except where all of the conditions set out in column A below are met AND at least one of the conditions set out in column B is met:

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Column A ALL of these conditions must be met	Column B AT LEAST one of these conditions must be met
Value for money can be demonstrated	One of the exceptions set out in rule 27 below applies
The extension is for the same or a lesser value and period than the original contract	The possibility of an extension was included in the invitation to tender documents
For an extension with a value in excess of £5,000,000, there is a report to Cabinet For an extension with a value in excess of £156,000 and under - £5,000,000 approval of an individual Cabinet member is required	Where applicable, the Assistant Chief Executive Legal & Democratic Services confirms in writing that one of the permissible grounds for extension under European procurement rules applies

- (ii) The extension document will be completed (ie signed or sealed) in the same manner as the original contract except in the case of construction contracts where the extension will be authorised in accordance with the relevant provisions set out in the contract

23 **Non-commercial considerations**

(a) **Considerations to be excluded**

Subject to rule 23(b), no part of the tender process, evaluation, contract award or contract or specification documents shall be based on:

- (i) the terms and conditions and composition of the contractor's workforce
- (ii) whether subcontractors are self-employed
- (iii) the contractor's involvement in irrelevant areas of government policy
- (iv) the contractor or contractor's employees' involvement in industrial disputes
- (v) the contractor's business locations – for example, to buy local or buy British
- (vi) any political, industrial or sectarian links or interest of the contractors, its directors or owners, or employees
- (vii) the contractor's financial support (or lack of it) to any organisation which the Council does or does not support.

(b) **Considerations which may be included for contracts for services subject to best value legislation**

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Contracts for services which are subject to best value legislation may base any part of the tender process, evaluation, contract award or contract or specification documents on:

- the terms and conditions and composition of the contractor's workforce, and/or
- the conduct of contractors or their workers in industrial disputes between them

provided that such matters are included either because:

- (i) TUPE applies, or
- (ii) it is reasonably necessary or expedient to permit or facilitate compliance with the best value requirements of the Local Government Act 1999

24 Appointment of consultants

- (a) The appointment of consultants is a contract for services and is therefore covered by these Rules as well as subject to the Financial Procedure Rules and the Procurement Framework.
- (b) Consultants may be appointed only if the appropriate Group Director is satisfied that the tasks required cannot be carried out adequately in-house – for example, due to lack of internal resources or expertise, specialist knowledge, independence and urgency.
- (c) The Consultant's contract must include provisions identifying who (normally it should be the Council) owns the intellectual property rights to any documentation, report, design or other work produced by the consultant and, if the Council is not to be the owner of those rights, the licensing terms for the use of the rights.
- (d) A consultant who provides advice or expertise to the Council on the nature, scope, extent or terms of a project /another contract shall not be permitted to bid, either alone or with others, for that project/other contract and the consultant's contract shall include provisions to ensure compliance with this Rule.

25 Framework Contracts

- (a) A Framework Contract is one where there is a main contract for the supply of goods or services which sets out the overall period of the contract (usually for no more than 4 years which is mandatory for contracts above the EU threshold) and the terms and conditions on which the goods or services will be purchased, but does not commit the Council to purchase any goods or services from that supplier. Any subsequent purchase contracts for those goods or services from that supplier will be made under that main Framework Contract.

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- (b) The main Framework Contract shall be let in accordance with the requirements of these Rules using the procedure set out in Schedules D, E, F or G as appropriate
- (c) Once the Framework Contract is operative all subsequent purchases under the Framework shall either not require further competition (if a single supplier) or, if there are 2 or more suppliers for those goods or services on Framework Contracts, the competition shall be in accordance with the provisions in the Framework Contract, or if no specific provisions by simple written quotations by those suppliers on the price payable for the goods or services
- (d) Government Framework Contracts (eg Buying Solutions contracts) and other public sector framework contracts.
Where the proposed contract is one for which Buying Solutions or another public sector body on behalf of the public sector has undertaken a competitive tendering exercise which fulfils EU Procurement Requirements and set out the terms and conditions on which such a contract is to be let and where the Council is seeking tenders only from those suppliers accredited to that framework tender and is to use the agreed terms and conditions then the tender process shall be as set out in Schedule H

26 Electronic Business

- (a) Purchases made using the Council's e-procurement system are effectively individual contracts entered into under the provisions of a framework agreement previously agreed between the Council and the supplier. Such purchases shall either not require further competition or, if there are 2 or more suppliers for those goods or services on the e-procurement system, the competition shall be by simple quotations by those suppliers on the price payable for the goods or services.
- (b) In the event of a Service wanting to use some other form of electronic business, eg e-auction, the procedure to be adopted shall first be agreed with the Assistant Chief Executive Legal & Democratic Services and the Group Director Finance & Commerce and in the event that the likely value of the contract will be over £156,000 that procedure shall be approved by the relevant Cabinet Member.

27 Exceptions

(a) General Exceptions to Rules

No exception to these Rules shall be permitted except upon approval by an individual Cabinet member using an executive decision Form A or by some other provision in this Rule. The report shall set out the background, the rule being waived, the reasons the waiver is required, how value for money will be demonstrated, any legal or financial risks or implications and shall be approved by the Assistant Chief Executive Legal & Democratic Services and the Group Director Finance & Commerce

(b) **Exceptions to competitive requirements**

Exceptions to the competition requirements set out in Schedules A to K apply may be made only if all relevant law is complied with e.g. European procurement and best value legislation and one of the following circumstances applies:

- (i) the contract falls within one of the exceptions listed in this Rule, and the Competition Financial Thresholds Exceptions Form (set out in the Procurement Framework at section C2), is fully and properly completed and signed by the relevant Group Director, and the person awarding the contract can demonstrate that the contract represents the best value that can be obtained in the circumstances.
- (ii) an individual Cabinet member has approved the waiving of the application of these rules, as permitted by Rule (a) above.
- (iii) the contract is solely for the employment of agency staff or interim managers (but not consultants)
- (iv) joint purchasing with or through another public body provided that the public body awarding the contract can demonstrate that the arrangements comply with European procurement, best value and other applicable legislation.
- (v) The instructing of counsel by the Assistant Chief Executive, Legal & Democratic Services
- (vi) they are allowed by some other specific provision in these Rules

The exceptions are:

- (i) **Genuine emergency**
Unforeseen events likely to cause immediate danger to people or property such as bombing or flooding.
- (ii) **Specialist services/supplies**
Available only from one supplier in the European Union – for example, specialist niche consultants or supplies.
- (iii) **For reasons of compatibility**
With existing services/products – for example, equipment that needs parts from its own manufacturer.
- (iv) **Urgency NOT of the Council's own making**
The urgency must be unforeseen – for example, a current supplier ceases to operate, or a contract is terminated for poor performance. *Urgency caused by previous delay by the Council or a requirement to implement a strategy or project urgently will not justify an exception under this exception.*

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(v) **Exceptions permitted under European procurement rules**
Where the contract is subject to the full application of the European procurement rules and there are specific exceptions which shall be complied with.

(vi) **Best Interests of the Council**
Where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable a contract procurement to be rapidly progressed while still complying with European procurement rules.

(c) **Emergency Action**

The Chief Executive or a Group Director personally may authorise a waiver of any of these Rules if they consider that the circumstances are such that such a waiver is necessary and desirable to further the aims of the Council or for the benefit of the residents of the borough. Such a waiver and the reasons for it shall be fully documented and, if reasonably possible, before giving the authorisation the Chief Executive or the Group Director shall consult with the Group Director, Finance & Commerce and the Assistant Chief Executive, Legal & Democratic Services and may consult with the relevant Cabinet Member.

SCHEDULES

Schedule A - Contracts under £ 15,000

- a) Advertising – none required
- b) Quotes & contract award

<u>Value</u>	<u>Number of quotes</u>	<u>Contract awarded by</u>
Less than £2000	One quote	Council staff member authorised by Head of Service
£2000 to £14,999	Two quotes – oral or written	Council staff member authorised by Head of Service

- c) Award criteria – normally solely price once quality threshold achieved
- d) Documentation – wherever possible through the Council's purchasing card system or using an approved standard form of contract.
- e) Retain documents – all documentation to be retained for 3 years or the life of the contract whichever is the longer
- f) Also check compliance with Rules 19, 20 & 23

Schedule B - Contracts between £ 15,000 and £ 59,999

- a) Advertising – none required
- b) Quotes & contract award – 3 written quotes sought, contract awarded by 3rd or 4th tier manager or staff member authorised by Head of Service
- c) Award criteria – compliance with specification and price
- d) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall be placed using an approved standard form of contract
- e) Retain documents – all documentation to be retained for 3 years after the end of the contract
- f) Also check compliance with Rules 19, 20 & 23

Schedule C - Contracts between £ 60,000 and £155,999

- a) Advertising – none required. Selection from existing approved list/existing contractors/Constructionline/
- b) Process & contract award – Mini tender – one stage

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- competitive tender against written specification of requirements
 - minimum of three written tenders sought
 - contract awarded by 3rd or 4th tier manager or staff member authorised by Head of Service and financial representative of Executive Director Finance & Planning
- c) Award criteria – compliance with the specification and price
- d) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
- (i) For supplies: the Council's Standard Terms of Purchase for Goods
 - (ii) For services: the Council's Standard Terms and Conditions for Services
- Contract to be signed by the duly authorised Head of Service, Group Director or Chief Executive, as appropriate or staff member authorised by the Head of Service
- e) Retain documents – all documentation to be retained for 6 years after the end of the contract
- f) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule D - Contract between £156,000 and £1,000,000 which is not subject to European procurement legislation advertising requirements (i.e. Part B services, or works less than £3,927,000)

- a) Pre tender Report – report to the appropriate Group Director or the Chief Executive for approval unless an exception applies – see Rule 27
- b) Advertising –it shall be advertised in either the local press, specialist trade press, or national press as appropriate to the contract. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
- c) Process – Full tender – 2 stages
- Selection of potential tenderers from those who express interest as a result of the initial advert
 - competitive tender against written specification of requirements
 - a minimum of 10 working days shall be allowed for tenders
 - minimum of three written tenders sought
 - contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety

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- d) Pre – award Report – there must be a report to an individual Group Director or the Chief Executive for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27
- e) Contract award - contract awarded by Group Director or the Chief Executive
- f) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
- g) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (i) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (ii) For services: the Council's Standard Terms and Conditions for Services

Contract to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- h) Retain documents – all documentation to be retained in accordance with Rule 17
- i) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule E - Contract between £156,000 and £1,000,000 which is subject to European procurement legislation advertising requirements (i.e. contracts for supplies, EU Part A services)

- a) Pre tender Report – report to the appropriate individual Group Director or the Chief Executive for approval unless an exception applies – see Rule 27
- b) Advertising – it shall be advertised in the Official Journal of the European Community. A minimum of 37 days shall be provided for expressions of interest in accordance with EU procurement legislation, except where the legislative requirements permit a shorter time scale. In addition there shall be at least 1 advertisement in either the specialist trade, local or national press, if appropriate to the contract.
- c) Process– Full EU advertised competitive tender process
 - competitive tender against written specification of requirements
 - a minimum of 40 calendar days shall be allowed for tenders
 - minimum of three written tenders sought
 - contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety

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- d) Pre – award Report – there must be a report to an individual Group Director or the Chief Executive for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27.
- e) Contract award - contract awarded by Group Director or the Chief Executive
- f) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
- g) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (i) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (ii) For services: the Council's Standard Terms and Conditions for Services

Contract to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- h) Retain documents – all documentation to be retained in accordance with Rule 17
 - i) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23
- Schedule F - Contract between £5,000,000 and £10,000,000** which is not subject to European procurement legislation advertising requirements (i.e. Part B services, or works less than £3,927,000)
- a) Pre tender Report – report to the appropriate individual Group Director or the Chief Executive for approval unless an exception applies – see Rule 27
 - c) Advertising –it shall be advertised in either the local press, specialist trade press, or national press as appropriate to the contract. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
 - c) Process– Full tender –2 stages
 - Selection of potential tenderers from those who express interest as a result of the initial advert
 - competitive tender against written specification of requirements
 - a minimum of 10 working days shall be allowed for tenders
 - minimum of three written tenders sought
 - contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety

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- d) Pre – award Report – there must be a report to an individual Cabinet Member for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27
- e) Contract award - contract awarded by Cabinet Member approval
- f) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
- g) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (i) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (ii) For services: the Council's Standard Terms and Conditions for Services

Contract to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- h) Retain documents – all documentation to be retained in accordance with Rule 17
- i) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule G - Contract between £5,000,000 and £10,000,000 which is subject to European procurement legislation advertising requirements (i.e. contracts for supplies, EU Part A services)

- a) Pre tender Report – report to the appropriate individual Group Director or the Chief Executive for approval unless an exception applies – see Rule 27
- b) Advertising – it shall be advertised in the Official Journal of the European Community. A minimum of 37 days shall be provided for expressions of interest in accordance with EU procurement legislation, except where the legislative requirements permit a shorter time scale. In addition there shall be at least 1 advertisement in either the specialist trade, local or national press, if appropriate to the contract.
- c) Process– Full EU advertised competitive tender process
 - competitive tender against written specification of requirements
 - a minimum of 40 calendar days shall be allowed for tenders
 - minimum of three written tenders sought
 - contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety

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- d) Pre – award Report – there must be a report to an individual Cabinet Member for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27.
 - e) Contract award - contract awarded by Cabinet Member approval
 - f) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
 - g) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (i) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (ii) For services: the Council's Standard Terms and Conditions for Services
- Contract to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.
- h) Retain documents – all documentation to be retained in accordance with Rule 17
 - i) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule H- Contract above £10,000,000 which is not subject to European procurement legislation advertising requirements (i.e. Part B services)

- a) Pre tender Report – report to individual Group Director or the Chief Executive for approval unless an exception applies
- b) Advertising –it shall be advertised in either the local press, specialist trade press, or national press as appropriate to the contract. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
- c) Process– Full tender –2 stages
 - competitive tender against written specification of requirements
 - a minimum of 10 working days shall be allowed for tenders
 - three tenders sought
 - contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
- d) Pre – award Report – there must be a report to Cabinet for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies.

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- e) Contract award - contract awarded by the Leader or Cabinet.
- f) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
- g) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (i) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (ii) For services: the Council's Standard Terms and Conditions for Services

Contract to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- h) Retain documents – all documentation to be retained in accordance with Rule 17
- i) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule I - Contract above £10,000,000 which is subject to European procurement legislation advertising requirements (i.e. contracts for supplies, EU Part A services)

- a) Pre tender Report – report to individual Group Director or the Chief Executive
- b) Advertising – it shall be advertised in the Official Journal of the European Community. A minimum of 37 days shall be provided for expressions of interest in accordance with EU procurement legislation, except where the legislative requirements permit a shorter time scale. In addition there shall be at least 1 advertisement in either the specialist trade, local or national press, if appropriate to the contract.
- c) Process– Full EU advertised competitive tender process
 - competitive tender against written specification of requirements
 - a minimum of 40 calendar days shall be allowed for tenders
 - three tenders sought
 - contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
- d) Pre – award Report – there must be a report to Cabinet for approval pre-award after the final evaluation of tenders by the evaluation team unless an exception applies.
- e) Contract award - contract awarded by the Leader or Cabinet
- f) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation

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- g) Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
- (i) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (ii) For services: the Council's Standard Terms and Conditions for Services

Contract to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- h) Retain documents – all documentation to be retained in accordance with Rule 17
- i) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule J - Framework Contracts

- a) Pre tender Report– report to the appropriate individual Group Director or the Chief Executive.
- b) Advertising –it shall be notified to those suppliers accredited by the OGC as having been accepted as part of the OGC tender process. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
- c) Process & contract award – Full tender – two stages
- competitive tender against written specification of requirements
 - a minimum of 10 working days shall be allowed for tenders
 - three tenders sought
 - if below £156,000 contract awarded by Head of Service on report from 3rd or 4th tier manager or staff member authorised by Head of Service and financial representative of Group Director Finance & Commerce
 - if between £156,000 and £5,000,000 contract awarded Group Director or the Chief Executive
 - if between £5,000,000 and £10,000,000 awarded by individual Cabinet member on a report from the relevant Head of Service
 - if above £10,000,000 contract awarded by the Leader or Cabinet via a Pre-award Report
- d) Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
- e) Documentation - all such contracts shall have a written specification of the Council's requirements and the standard terms and conditions approved by the OGC for that particular contract

Governance Committee (Special), 17 February 2010

Contracts over £100,000 to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- f) Retain documents – all documentation to be retained for in accordance with Rule 17
- g) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule K - Consortium Arrangements (where LBH is not a member)

- a) Pre-tender Report – report to individual Group Director or the Chief Executive for approval to use a consortium. Report to include details of the procurement process used by the consortium and confirmation that Havering's involvement will be within the terms of the consortium and will not breach European procurement requirements in addition to the standard requirements for such reports.
- b) There should be a minimum of three suppliers to the consortium who can be invited to provide quotations for the goods or services
- c) Award criteria - compliance with the evaluation criteria (primarily specification & price) either as set out in the consortium documentation or if none agreed prior to the dispatch of tender documentation
- d) Pre – award Report – there must be a report to an individual Group Director or the Chief Executive if below £5,000,000 or an individual Cabinet Member (if below £10,000,000) or to the Leader or Cabinet for approval pre-award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27.
- e) Documentation - all such contracts shall have a written specification of the Council's requirements and the standard terms and conditions of the Consortium for that particular contract

Contracts over £100,000 to be executed under seal in accordance with Article 10.05 of this constitution. The Legal Document Execution Form must be duly completed.

- f) Retain documents – all documentation to be retained for in accordance with Rule 17
- g) Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

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