

# CONSTITUTION OF SOMERSET COUNTY COUNCIL

**May 2019**

## **PART 1 – CONSTITUTIONAL ARRANGEMENTS**

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# Section 1 - The Constitution

1.1 **PURPOSE:** The Constitution sets out how the Council operates and how decisions are made. It reflects current legislation and, where appropriate, the ability of the Council to choose from options available within the law. Legislative requirements take precedence over the contents of this Constitution.

1.2 **STRUCTURE:** The Constitution comprises:  
(a) Part 1 – Constitutional Arrangements: These sections set out the basic rules governing the Council's business.  
(b) Part 2 – Rules, Codes and Protocols: Supporting documents relating to the role and rights of elected Members and Officers.

1.3 **REVIEW:** Full Council approves the Constitution and updates it at least annually and as recommended by the Constitution and Standards Committee.

Note: The part of the Constitution that comprises the Council's 'executive arrangements' has also to be agreed by the Council Leader.

1.4 **INTERPRETATION:** The Chair of Council's ruling on the interpretation and / or application of this Constitution is final. The Chair will consult the Monitoring Officer prior to issuing such a ruling.

1.5 **ACCESS:** The Constitution is published on the Council's website at <http://www.somerset.gov.uk/constitution> and copies can be inspected at County Hall, Taunton in normal office hours. Copies can be purchased for a reasonable fee. Printed copies are available from Democratic Services (01823 357628).

1.6 **DEFINITIONS:**

**Budget.** Reference to the 'Budget' includes the allocation of funds to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement and investments, the control of its capital expenditure, the setting of virement limits and procedures for dealing with under and overspendings on budget headings at year end.

**"Disciplinary action"** has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001.

**"Executive" and "executive Leader"** have the same meaning as in Part II of the Local Government 2000 Act.

**Land.**

(a) "Land" has the meaning assigned to it in Section 205 of the Law of Property Act 1925 and, in particular, but without in any way limiting

that meaning, includes land, buildings or parts of buildings and easements of both freehold and leasehold tenure;

- (b) References to the acquisition of land include the acceptance of gifts of land and the taking of leases, licences, dedications and easements of or over any land (including buildings) whether by way of valuable consideration or exchange but not the appropriation of land.

### **Local Choice**

'Local Choice' functions are indicated throughout the document in italics. The Council may choose to exercise 'local choice functions' itself, delegate them to Committees or Officers or to the Leader as 'executive' functions. They may be further delegated as indicated within the Constitution.

**"Member of staff"** means a person appointed to or holding a paid office or employment under the authority; and

**Policy Framework.** This refers to following plans and strategies:

- (a) Somerset Health & Wellbeing Strategy (agreed on behalf of the Council by the Somerset Health and Wellbeing Board)
- (b) Local Transport Plan;
- (c) Plans and alterations which together comprise the Development Plan;
- (d) Medium Term Financial Plan
- (e) Treasury Management Plan
- (f) Asset Management Plan
- (g) County Plan
- (h) The Council's Pay Policy Statement.

**"Proper Officer"** means an Officer appointed by the authority for the purposes of the provisions in this Part.

**Senior Leadership Team:** This description includes the following posts: Chief Executive; Director of Corporate Affairs; Director for Adult Services & Lead Commissioner Adults and Health (DASS); Director of Childrens Services; Lead Commissioner Economic and Community Infrastructure & Director of Commissioning; Director of Finance; Commercial and Business Services Director; Public Health Director; Deputy Director Children and Families ; Economic & Community Infrastructure Operations Director; Economic & Community Infrastructure Commissioning Director; Managing Director Somerset Waste Partnership; Adult Services Operations Assistant Director; and HR & OD Director.

**"The 1989 Act"** means the Local Government and Housing Act 1989;

**"The 2000 Act"** means the Local Government Act 2000;

## Section 2 - Members of the Council

**2.1 COUNCIL COMPOSITION:** The Council consists of 55 County Councillors (commonly referred to as Members) elected by, and representing the voters of, an area of Somerset referred to as an electoral division. Members are elected for a 4 year period. The next election for all 55 Members is in 2021. Details of current councillors including contact details are set out on the Council's website.

**2.2 ROLES AND FUNCTIONS OF MEMBERS:** Detailed role descriptions for Members are set out in Part 2 (Rules, Codes and Protocols). In summary:

- (a) **Key roles.** All Members:
  - (i) Take formal decisions;
  - (ii) Provide a key link between representing their communities and the Council;
  - (iii) Participate in running the Council.

Some Members also hold positions of special responsibility, e.g. Leader of Council, Cabinet Members and Committee Chairs.

- (b) **Rights and duties:** Members:
  - (i) Have rights of access to information held by the Council.
  - (ii) Must act in accordance with the law and this Constitution including the Members' Code of Conduct.

### 2.3 APPOINTMENTS:

2.3.1 In Council election year, all Council and Leader Member appointments are valid until the new Council meets following the election or until a replacement is appointed, as long as the Member is re-elected to the Council. The only exceptions to this are the appointments of Chair and Vice-Chair of Council who remain in post until their replacements are appointed by the new Council following the election, whether or not they were re-elected as councillors at the election.

2.3.2 The Council or the Leader (depending on who has responsibility for the appointment) can change any appointment at any time. In addition, Members will automatically be removed from any Council position or appointment if:

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

2.4 **ALLOWANCES:** Members are entitled to receive allowances for undertaking official duties in accordance with the Scheme of Members' Allowances set out in Part 2 of this Constitution.

## Section 3 - Citizens and the Constitution

**3.1 CITIZENS' RIGHTS:** The Constitution explains citizens' rights to access information about the democratic process and opportunities to participate in it. For reasons of space, it does not detail all of the rights of citizens in respect of the work of the Council and much more information can be found on the Council's website.

**3.2 VOTING AND PETITIONS:** Somerset citizens registered on the electoral roll can:

- (a) Vote at the County Council elections.
- (b) Petition the Council (subject to meeting the minimum number of signatures required and published by the Council annually) for a referendum to request the election of a directly elected mayor model of governance for Somerset and the Council as an alternative to the Leader and Cabinet governance model.
- (c) Petition for a community governance review of the area to request changes to electoral division arrangements.

Also, if you live, work or study within Somerset you can submit or present a petition on any matter which relates to a function of the Council and you will receive a response. The Council has a petitioning scheme on its website together with the facility to submit on-line petitions.

**3.3 ACCESSING INFORMATION:** This is a summary of the provisions set out in Section 8 – Decision-making Access to Information Procedure Rules. Citizens can:

- (a) Attend formal member meetings and make representations;
- (b) Find out about decisions made and to be made and make representations to decision makers before decisions are taken (for all Member decisions and some Officer decisions);
- (c) Inspect the Council's accounts and submit views to the external auditor;
- (d) Access certain information held by the Council using the provisions of the Freedom of Information Act 2000;
- (e) Access personal information held about them by the Council, in accordance with the relevant data protection legislation.

**3.4 COMPLAINTS:** Citizens rights to make complaints or submit views on services are detailed on the Council's website. Complaints about Members are dealt with under a separate procedure and the process is also detailed on the Council's website.

### 3.5 **CITIZENS' RESPONSIBILITIES:**

3.5.1 Citizens must not be violent, abusive or threatening to Members or Officers (either physically or verbally), nor may they harass or victimise Members or Officers of the Council.

3.5.2 Citizens must not wilfully harm any property owned by the Council, Members or Officers. In addition they must not misuse information obtained in the course of their contact with the Council (e.g. for personal/commercial financial gain).

3.5.3 The Council take complaints very seriously but it also has a procedure – the **Unacceptable Customer Behaviours Policy** - which will only be used in exceptional circumstances, to respond to habitual and vexatious complainants.



# Section 4 - Full Council

## ARRANGEMENTS

4.1 **FORM AND COMPOSITION:** Full Council (“the Council”) consists of all 55 Members.

4.2 **FUNCTIONS AND RESPONSIBILITIES:**

### 4.2.1 Full Council Responsibilities:

To:

(a) (i) Approve the Constitution annually on the recommendation of the Constitution and Standards Committee. Only Council can change the model of democratic governance or the Council’s Committee structure or the operational arrangements of the Council. Approval of the Constitution is subject to the Leader’s approval of any changes to the Leader and Cabinet arrangements.

(ii) Subject to (i) above, delegate authority to the Constitution and Standards Committee to approve in-year amendments to specific parts of the Constitution.

(b) Approve the Policy Framework and Budget (see Part 1, Section 1 for definitions of both);

(c) Take any decision which is a departure from the Policy Framework or Budget, subject to the urgency procedure contained in Part 1, Section 8 - Decision-making Arrangements;

(d) Appoint the Leader of the Council for a 4 year period including the power to rescind the appointment;

(e) Consider any issues referred by the Leader or the Scrutiny Committee Chair for advice, including issues where the Leader and the relevant Committee are not in agreement;

(f) Adopt a Scheme of Members’ Allowances - see Part 2 of the Constitution – Part D;

(g) Appoint Council Committees (including their Chairs and Vice-Chairs as appropriate) and decide their functions annually. The Committees, their functions and operating arrangements are detailed in Part 1, Sections 6, 6A and 6B;

(h) Remove the Chairs and Vice-Chairs where appointed by the Council;

(i) Receive regular reports from the Cabinet and the Scrutiny Committees on their work, including an annual report from each Committee;

(j) Receive an annual report from the Leader of Council, in addition to the Leader submitting any matter for consideration by the Council at any other time. The Leader will also report significant changes

made to Cabinet arrangements to the next available meeting of the Council

- (k) Receive annual reports on the work of the Pensions, Audit and Constitution and Standards Committees, and the Corporate Parenting Board. The annual report of the Constitution and Standards Committee will be taken as the first main item of business on the Council agenda at the AGM. The report of the Corporate Parenting Board will be taken as the second main item of business on the Council agenda at the AGM;
- (l) Receive reports for information on an 'as and when' necessary basis from the HR Policy Committee;
- (m) Approve the annual calendar of meetings for Council and Committee meetings;
- (n) Approve the appointment of the Chief Executive on the recommendation of the Appointments Committee;
- (o) Consider any matter for which the Council has a responsibility or which, in the Council's opinion, affects the authority's area or its inhabitants;
- (p) Appoint or nominate representatives of the Council to serve on joint or outside bodies where these appointments are the responsibility of the Council;
- (q) *The appointment of any individual*
  - (i) *to any office other than an office in which he/she is employed by the authority*
  - (ii) *to any body other than*
    - *the authority*
    - *a Joint Committee of two or more authorities; or*
    - *any Committee or Sub-Committee of such a body, and the revocation of any such appointment;**('Local choice' function for appointments which are the responsibility of Council)*
- (r) Make an order to implement recommendations made in a community governance review of electoral division arrangements;
- (s) Approve the treasury management policy statement on an annual basis;
- (t) Approve the Council's pay policy statement on an annual basis;
- (u) Receive the Annual Reports of the Heart of the South West Local Enterprise Partnership and the Avon & Somerset Police and Crime Panel following consideration by the Cabinet, and any other relevant partnership as requested by the Constitution and Standards Committee;
- (v) Deal with all other matters which, by law, must be reserved to Council.

#### 4.2.2 Full Council delegations:

Council delegates functions and responsibilities to:

- (a) Committees of the Council – as detailed in Part 1, Sections 6A and 6B.
- (b) Officers of the Council – as detailed in Part 1, Section 7
- (c) The Council Leader (under the ‘local choice’ provisions) – as detailed in Part 1, Sections 5 and 8.

The Council can also delegate County Council functions to another council or accept functions. A Committee of the Council may do the same.

**4.2.3 DESCRIPTION OF EXECUTIVE ARRANGEMENTS:** The following parts of the Constitution comprise the ‘executive arrangements’ of the Council which are the responsibility of the Council to agree:

- (a) Part 1, Section 5 – Leader and Cabinet Arrangements (subject to the approval of the Leader - see note below)
- (b) Part 1, Section 6A – Scrutiny Committee Arrangements
- (c) Part 1, Section 8
  - Paragraphs under 8.5 – Council and Cabinet Scheme of Delegation to Officers – relevant delegations
  - Paragraphs under 8.6 – Decision-making Access to Information Procedure Rules

Note: The Leader and Cabinet Arrangements which form part of the Council’s executive arrangements are the responsibility of the Leader to approve.

**4.3 FULL COUNCIL MEETINGS:** There are 3 types of Full Council meeting:

- (a) The Annual General Meeting in May, to deal with procedural matters and appointments as well as the usual business of the Council.
- (b) Ordinary Meetings – held 3 times a year normally in February, July and November to deal with the usual business of the Council. In a County Council election year there is an additional meeting in advance of the election.
- (c) Extraordinary (or special) Meetings. These deal specifically with the business for which the meeting has been called. They can be called by:
  - (i) The Council;
  - (ii) The Chair of the Council or, in the absence of the Chair, the Vice-Chair of the Council;
  - (iii) Any 5 Members of the Council through a signed request to the Chair of the Council (or the Vice-Chair in the absence of the Chair). The Chair must make arrangements to call an extraordinary meeting within 7 calendar days of receiving the request;

(iv) The Monitoring Officer.

**4.4 TIME AND PLACE OR FULL COUNCIL MEETINGS:** Council meetings usually start at 10.00am and are normally held at Shire Hall, Taunton. The dates of Council meetings are published on the Council's website for up to a year in advance of the meetings.

## **PROCEDURAL RULES**

4.5 **ELECTION OF CHAIR AND VICE-CHAIR:** Council elects the Chair and Vice-Chair each May. If a vacancy in these positions occurs the Council will fill the vacancy at the next available meeting. In the absence of the Chair and the Vice-Chair at a Council meeting, a Chair will be elected for the meeting from the members present.

4.6 **CHAIR'S POWERS AND FULL COUNCIL MEETINGS:** The Chair may:

- (a) Call an extraordinary meeting of Full Council;
- (b) Vary the order of business for Full Council meetings in advance of the agenda being sent out or at the meeting itself;
- (c) Alter both the start time and the venue of Full Council meetings;
- (d) Decide how and when business from an adjourned meeting is dealt with;
- (e) Exercise discretion over the application of the requirements of the rules for public question time and member debate.

4.7 **QUORUM:** 14 Members are required for a valid Full Council meeting to be held. If a quorum is not present, the meeting will be adjourned until a quorum is present or any remaining business will be considered at the next Ordinary Meeting or at a time and date fixed by the Chair.

4.8 **FULL COUNCIL MEETING BUSINESS PLAN:** The Business Plan for each meeting is contained within the Chair's Schedule which is published on the day of the meeting to members, all other persons attending the meeting and on the Council's website. Public questions or statements to be considered at the meeting shall be published on the Council's website by 5pm on the working day before the meeting is held.

4.9 **PROPOSALS REQUISITIONED BY MEMBERS:** Any Member can requisition a proposal for consideration by the Council. In order to be formally considered requisitioned proposals must:

- (a) Relate to Council business or be a matter which affects the County and must request the Council to take action;
- (b) Be formally notified to the Monitoring Officer at least 10 days before the meeting at which it is to be considered.
- (c) Be formally proposed by the Member who submitted it or, with his/her consent, by another Member;
- (d) Be formally seconded by another Member at the meeting.

A proposal can only be withdrawn by the Member who originally submitted it either in writing in advance of the meeting or verbally at the meeting.

#### **4.10 PUBLIC QUESTION TIME (INCLUDING TREATMENT OF SMALL PETITIONS)**

Note: References in this section to petitions relate to petitions which individually or collectively (on the same subject matter) contain under 5000 signatures.

4.10.1 Public representations (questions, statements or a petition) must be received in writing by the Monitoring Officer by 5pm on the Thursday prior to the meeting (for Wednesday Council meetings) to be considered at that meeting. Any questions, statements or petitions received after the deadline will only be considered with the discretion of the Chair of the relevant meeting. The questioner will need to set out reasons for their late submission to be considered at the meeting. If the Chair rejects the late question or statement then a written reply will be provided by the council within 20 working days of the meeting.

Notwithstanding the above, where a question relates to a matter which is included on the agenda for a meeting at which the question is to be put but that agenda or any Officers Report has not been made available before the normal deadline for submission of questions by 5pm three clear working days before the meeting then provided written notice of a question is received within 24 hours of that Agenda or Report having been so published then the question shall be allowed.

4.10.2 If a person submits more than three questions (including any sub-division or component questions ie. Question 1a, 1b and 1c would mean three questions the same as Question 1, 2 or 3) then only the first three questions shall be accepted for a meeting (subject to those questions not duplicating or being similar to other questions received from other persons for the meeting). Where there is duplication or the question or statement is similar then it is proposed that those will be rejected. The Monitoring Officer shall adjudicate on the application of this in consultation with the Chair.

4.10.3 Public representations will be rejected by the Chair of the Council, following consultation with the Monitoring Officer, if they:

- (a) Do not relate to a matter for which the council has a responsibility or which affects the County;
- (b) Are defamatory, frivolous, offensive, vexatious or unlawful;
- (c) Are substantially the same as a public representation which has been put at a meeting of the Council, Cabinet or a Committee in the past six months;
- (d) Require or request the disclosure of confidential or exempt information in any response;
- (e) Relate to any non-determined planning application or town and village green application
- (f) Name or identify individual service users, members of staff or members of staff of partner agencies
- (g) Are considered to be inappropriate for the particular meeting

The Monitoring Officer can edit public representations in consultation with the author and the Chair. If changes cannot be agreed the Monitoring Officer can reject the representations.

4.10.4 The Chair's Schedule for the meeting includes details of public representations. They are also detailed in the Minutes together with the responses (given at the meeting or provided following the meeting). Up to 20 minutes is allowed for public question time.

4.10.5 Members of the public have up to 3 minutes to introduce and present their representations. If a member of the public is unable to attend a meeting in person, then they will be allowed to arrange for someone to ask the question on their behalf. If no person is able to put the question to the meeting then either the Chair or the Monitoring Officer shall present their question to the meeting.

4.10.6 A Member (usually the relevant Cabinet Member) will normally provide a brief verbal response to public representations at the meeting. There will be no member debate. If a full response cannot be given at the meeting, then a written response will be provided within 20 working days of the meeting.

#### **4.11 TREATMENT OF LARGE PETITIONS**

4.11.1 Petitions of 5000 or more signatures (individually or collectively) qualify for a 15 minute debate at a Full Council meeting if notice is given in accordance with 4.10 above.

4.11.2 The petition will be regarded as having been formally handed over to the Chair and the Council by being placed on the front table at the meeting.

4.11.3 The petition organiser will have a maximum of 5 minutes to introduce the petition. Any related public questions to the petition will then be considered – the normal rules for public questions set out in 4.10 above apply.

4.11.4 The relevant Cabinet Member has a maximum of 5 minutes to respond to the petition organiser / public questions prior to a member debate which is limited to 15 minutes.

#### **4.11A FILMING OF FULL COUNCIL MEETINGS BY THIRD PARTIES**

4.11A.1 Recording and transmission of formal Council meetings by third parties is allowed to in accordance with the Somerset County Council Recording Protocol: Third Party Recording of Committees, Boards and Panels as set out as Appendix I in Part 2 of the Constitution. Details of the provisions are included on all formal meeting agendas and are displayed in the meeting rooms.

#### **4.12 LEADER AND CABINET MEMBER REPORTS - MEMBER**

**QUESTIONS:** Member questions must be received by the Monitoring Officer

by 5pm on the Thursday before the meeting (when that meeting is being held on a Wednesday) to guarantee receiving a full response by the Cabinet Member at the meeting. Questions notified are included in the Chair's Schedule for the meeting. If notice is not given a full answer may be given at the meeting but if this is not possible a written answer will be provided within 20 working days of the meeting. Questions and responses are included in full in an appendix to the Minutes.

#### **4.13 OVERTURNING COUNCIL DECISIONS**

4.13.1 A proposal to:

- (a) overturn a decision made within the past 6 months; or
- (b) consider a similar proposal to one that has been rejected in the past 6 months

can only be considered if supported by at least 10 Members at the meeting. Once dealt with, the Council will not consider a similar proposal for 6 months.

4.13.2 Paragraph 4.13.1 above does not apply to recommendations of the Leader, the Cabinet, a Committee or decisions / proposals made prior to the last main County Council election.

#### **4.14 PROPOSALS AND AMENDMENTS NOT REQUIRING NOTICE:**

4.14.1 The following proposals or amendments to proposals can be proposed at a Full Council meeting without giving notice under paragraph 4.9:

- (a) Electing a Chair.
- (b) Referring a matter to the Leader or a Committee.
- (c) Appointing a Committee (or Members to a Committee) when the agenda contains an item to allow Members to do so.
- (d) Requesting approval to withdraw a proposal.
- (e) Amending a proposal submitted under paragraph 4.9 above.
- (f) Amending a recommendation in a report.
- (g) Asking the Council to proceed to the next item on the agenda.
- (h) Asking the Council to move straight to a vote on the issue being discussed (otherwise known as a proposal that the question is put to the vote without delay).
- (i) Adjourning the debate.
- (j) Adjourning the meeting.
- (k) Suspending the Council's procedural rules.
- (l) Excluding the press and public to deal with confidential or exempt business.
- (m) Dealing with disorderly conduct by a Member under paragraph 4.20 that follows below;
- (n) Dealing with disorderly conduct by a member of the public under paragraph 4.21 below.



4.14.2 Significant amendments must, wherever possible, be received by the Monitoring Officer by noon on the Monday before a Wednesday meeting. The Monitoring Officer will approve any amendments and include them in full in the Chair's Schedule. Amendments received after the Monday deadline will only be allowed at the discretion of the Chair.

#### 4.15 **VOTING:**

4.15.1 Decisions are made by a simple majority vote. The Chair will seek a general verbal agreement from those present or request a show of hands. If the vote is equal, the Chair can exercise a second or casting vote and may cast one or both votes in whatever way he or she chooses. Any Member immediately following a vote can request that their vote is recorded in the Minutes.

4.15.2 If 11 Members present demand it (by standing), the names for and against the proposal or amendment and those who didn't vote are recorded in the Minutes.

4.15.3 For any budget proposal or amendment formally considered, the names of the persons who voted for or against, or those who didn't vote, are recorded in the Minutes.

4.15.4 Where there are more than two people nominated for any position and one person fails to achieve a clear majority of votes, then the person with the least number of votes is taken off the list and a new vote taken. The process continues until there is a majority of votes for one person.

4.16 **MINUTES:** Minutes include all proposals, amendments and decisions in the exact form and order considered at the meeting. With the consent of the Council, the Chair will sign the Minutes as a correct record at the next scheduled meeting. Only the accuracy of the Minutes may be discussed. Any signed Minute is sufficient to be received in evidence in a court of law without further proof.

In respect of the Council's audio recordings of its meetings, reference should also be made to the Access to Information Procedure Rules.

4.17 **RECORD OF ATTENDANCE:** All Members present must sign the attendance sheets provided at the meeting.

4.18 **EXCLUSION OF THE PUBLIC:** The public and press can only be excluded for confidential or exempt business or under paragraph 4.21 (Disturbance by the public).

#### 4.19 **MEMBERS' RIGHT TO SPEAK**

4.19.1 A Member's speech must relate either to the matter under discussion or to a 'personal explanation' or to a 'point of order', as appropriate. A

member has up to 5 minutes to speak on an agenda item and shall speak only once on a single item.

4.19.2 Any Member who wants to raise either a point of order or to speak by way of personal explanation will be allowed by the Chair to speak immediately.

- (a) **Points of order** - the Member must immediately state which procedural rule or statutory provision has been broken and in what way.
- (b) **Personal explanation** – a Member has the right to speak to clarify remarks made by him/her earlier in that debate which appear to him/her to have been misunderstood.

4.19.3 In seconding a proposal or an amendment a Member can reserve his/her right to speak later in the debate.

#### 4.20 MEMBERS' CONDUCT

4.20.1 Members must indicate their wish to speak to the Chair. When invited by the Chair, the Member must stand and address the meeting through the Chair. If the Chair stands during a debate, any Member speaking at the time must immediately be silent and sit down and all other Members must be silent and seated.

4.20.2 If a Member's behaviour disrupts the meeting, the Chair can propose that the Member is silent and if seconded, the proposal will be voted on without discussion. If agreed and the Member continues to behave improperly, the Chair can propose that either the Member is excluded from the meeting or that the meeting is adjourned for a specified period. If seconded, the proposal will be voted on without discussion.

4.20.3 If there is a general disturbance amongst the Members, the Chair may adjourn the meeting for as long as he/she thinks necessary.

4.21 **DISTURBANCE BY THE PUBLIC:** If a member of the public interrupts the meeting, the Chair will invite the person to stop. If they continue to disrupt the meeting, the Chair can order their removal from the meeting room. If there is a more general disturbance the Chair may adjourn the meeting to allow all or part of the meeting room to be cleared.

#### 4.22 SUSPENSION AND AMENDMENT OF COUNCIL MEETING RULES

4.22.1 Any Full Council meeting rule can be suspended with the agreement of the Council as long as at least 40 of the 55 Members of the Council are present. Suspension can only be for the duration of the meeting or part of the meeting.

4.22.2 Any proposal (other than a recommendation contained in a report) to change any of the Full Council meeting rules will, if seconded, be referred

without discussion to the Constitution and Standards Committee for consideration and report to the next scheduled Meeting of the Council.

**4.23 APPLICATION OF THESE RULES TO COMMITTEES OF THE COUNCIL:** Procedural rules 4.5, 4.10, 4.15 to 4.18 and 4.20 to 4.21 apply with appropriate modification to meetings of the Committees of the Council. The procedural rules that apply to the Council's 'executive' arrangements are detailed in Part 1, Section 5 of this Constitution.

## Section 5 - Leader and Cabinet Arrangements

### 5.1 LEADER, DEPUTY LEADER AND CABINET APPOINTMENTS

5.1.1 The Council appoints the Leader of Council for a period of 4 years and the Council can rescind the appointment at any time.

5.1.2 A Cabinet of 8 members (the maximum allowed is 10 members) has been appointed by the Leader including a Deputy Leader and 6 other Cabinet Members. The Leader can change the Cabinet membership at any time. All members of the Cabinet are currently members of the largest political group on the Council. The Leader chairs meetings of the Cabinet unless absent when the Deputy Leader chairs the meeting.

5.1.3 The Leader has appointed 2 Junior Cabinet Members to provide support to the Cabinet Members as well as a degree of possible succession planning for future Cabinet membership. Their main responsibilities are detailed in 5.6 that follows. Junior Cabinet Members cannot legally be given the full range of Cabinet Members responsibilities and therefore they cannot take formal decisions. They have, however, been given a formal constitutional role as they are required to be consulted on key and non-key decision reports that fall within their service areas.

5.1.4 The Chair and Vice-Chair of the Council and members of any of the Scrutiny Committees cannot be members of the Cabinet.

### 5.2 FUNCTIONS AND RESPONSIBILITIES OF THE LEADER

5.2.1 Under the Policy Framework and Budget agreed by the Council, the Leader of the Council ("the Leader") is responsible for the day-to-day running of the Council and all related decisions (known as 'executive' decisions). The Leader therefore discharges all the Council's responsibilities under Education and Social Services legislation and as Highway Authority (other than those public rights of way decisions exercised by the Regulation Committee), County Planning Authority (other than the determination of planning applications), Waste Disposal Authority, Public Transport Authority and Traffic Authority and for all its statutory duties, including the exercise of 'local choice' functions delegated by the Council.

*'Local Choice' functions (see Part 1, Section 1 for a definition) are indicated in italics below.*

5.2.2 The Leader has allocated decision-making responsibilities to:-

- (a) The Leader;
- (b) The Cabinet;
- (c) The Traffic Regulation Order Sub-Committee of the Cabinet;
- (d) Jointly to two Cabinet members;
- (e) Individual Cabinet members;
- (f) The Somerset Waste Board; and

(g) Senior Leadership Team Officers.

Note: (g) above includes the following interim appointments in the absence of relevant contracted employees:

- Interim Director of Finance
- Interim Director of Children's Services
- Interim Deputy Director of Children's Services
- Interim Operations Director of Children's Services.

5.2.3 The Leader has retained the following responsibilities:-

- (a) To refer to Council for approval any proposed executive decision which is outside of the Council's Policy Framework or Budget, or the virement limits set by the Council.
- (b) To exercise any delegated executive decision-making responsibility including where a Cabinet Member wants to take a decision against officer advice, or where there is uncertainty as to who may take a decision.
- (c) In addition to any specific delegations to Cabinet Members and Senior Leadership Team Officers, to acquire land by agreement or, failing agreement, by compulsory purchase and to dispose of County Council land – see 5.2.4 to 5.2.6 below.
- (d) To appoint any individual to an outside body or partnership or joint committee of two or more authorities where the appointments relate to executive functions.
- (e) *The determination of an appeal against any decision made by or on behalf of the authority in respect of Early Years Providers. (Local choice function)*
- (f) *The appointment of any individual*
  - (i) *to any office other than an office in which he/she is employed by the authority*
  - (ii) *to any body other than*
    - *the authority*
    - *a Joint Committee of two or more authorities; or*
    - *any Committee or Sub-Committee of such a body,**and the revocation of any such appointment*  
*('Local choice' function for appointments falling under the responsibility of the Leader)*

5.2.4 The Leader can only acquire land after having first considered the Chief Finance Officer's advice and recommendations on the value and for a sum no greater than the maximum (if any) recommended by the Chief Finance Officer.

5.2.5 When acquiring land or disposing of land, the Leader will comply with the relevant general procedures laid down by the Council including for dealing with capital payments or capital receipts.

5.2.6 The Leader shall not re-delegate his / her power to acquire land, except:-

- (a) where statute permits;
- (b) where the powers concern the compulsory acquisition of land or the acceptance of gifts of land for the creation or improvement of an existing County road - these powers can be delegated to a Sub-Committee comprising the Leader, Deputy Leader and one other Member of the Cabinet.

5.2.7 The Leader can amend the Leader and Cabinet arrangements at any time via a Leader's Non-Key decision. Any changes will be reported for information to the next meeting of the Council.

5.2.8 In the absence of the Leader or where the Leader is unable to act, the Deputy Leader has authority to exercise the Leader's responsibilities.

### **5.3 DECISION MAKING RESPONSIBILITIES AND FUNCTIONS OF THE CABINET**

5.3.1 The Cabinet collectively take key strategic, policy or operational decisions or where there are significant cross-cutting issues across 3 or more Cabinet Member's areas of responsibility as set out in 5.3.2 below e.g. the Council's County Plan, and countywide plans.

5.3.2 The Cabinet:-

- (a) Make recommendations to Council on the Policy Framework, except where the statutory responsibility for the submission of such recommendations rests with another body;
- (b) Recommends the Annual Budget and Precept to Full Council for approval;
- (c) Advises the Council on the economy, efficiency and effectiveness of its activities and the need for new services and the necessity of existing ones;
- (d) Advises the Council on the overall organisation, co-ordination and management of the Council;
- (e) Advises the Council on its policy and response to international, national and regional initiatives;
- (f) Has responsibility for the overall allocation and control of the financial, staff and land resources of the Council and acts as the 'corporate client';
- (g) Receives the annual outturn reports;
- (h) Approves the Council's risk management strategy and policy statement. This is a joint responsibility with Full Council;

- (i) Recommend the treasury management policy statement to Full Council for approval, on an annual basis;
- (j) Reviews policy and develops and agrees new policy (aside from policies within the Council's Policy Framework) as required, seeking where appropriate to involve scrutiny in the development of proposals;
- (k) Considers any Scrutiny Committee recommendations.

5.3.3 In addition, the Leader may put on any Cabinet meeting agenda any 'executive' matter which he or she wishes providing the statutory notice requirements are complied with.

5.3.4 The Leader, a Cabinet Member or the Cabinet can delegate functions to another council or to accept functions from another council in their area of responsibility.

**5.4 ALLOCATION OF SERVICE RESPONSIBILITIES AND DECISION MAKING RESPONSIBILITIES TO CABINET MEMBERS - SUMMARY:**

5.4.1 Service responsibilities allocated to Cabinet Members by the Leader are detailed on the Council's website. Alternatively, a copy can be obtained from the Democratic Services Team, tel 01823 357628.

5.4.2 Cabinet Members take Key and Non-Key Decisions in their allocated service areas and some have additional responsibilities as detailed in this section. They always have the option to refer decisions to full Cabinet. They:

- (a) Ensure effective delivery of services;
- (b) Are responsible for all policy matters in their area of responsibility involving scrutiny as appropriate;
- (c) Monitor compliance with policies and the framework of accountability and control.

5.4.3 A Cabinet Member can convene, on an ad hoc basis, a small representative group of Members of the Council (i.e. all party) to assist in the consideration of particular issues or matters. These are not formal meetings as defined in the Code of Conduct and the Cabinet Member is responsible for all of the arrangements.

**5.5 ALLOCATION OF DECISION MAKING RESPONSIBILITIES TO CABINET MEMBERS**

Cabinet functions for which responsible	Conditions on the exercise of the function
<p><b><u>General delegations to all Cabinet members</u></b></p> <p><b>Key Decisions:</b></p>	<p><b>General:</b></p> <p>A Cabinet Member can take a Key Decision and Non-Key Decision as long as it is:-</p>

<p>Cabinet Members take Key Decisions in their areas of responsibility (except those reserved to the Leader or Cabinet).</p> <p><b>Non-Key Decisions:</b> Cabinet Members take Non-Key decisions in their areas of responsibility – as follows:</p> <ul style="list-style-type: none"> <li>• To spend budgets or realise savings between £100,000 and £500,000</li> <li>• To approve bids for Council funding from external bodies, subject to suitable on-going revenue support and time periods/exit strategies are in place.</li> <li>• To submit bids on behalf of the Council for external funding, subject to suitable on-going revenue support and time periods/exit strategies are in place.</li> <li>• To let contracts and employ consultants and contractors on behalf of the Council</li> <li>• To declare land surplus to operational requirements</li> <li>• To approve responses to consultation papers</li> <li>• To authorise any relevant consultation on behalf of the Council</li> <li>• To make planning and building regulations applications</li> <li>• To approve capital or revenue virements between £50,000 and £ 250,000 in consultation with the relevant Senior Leadership Team Officer and the Director of Finance To appoint representatives to internal committees / bodies and joint committees</li> <li>• To approve procurement / tendering for delivery of services on behalf of the County Council (with no financial limit)</li> <li>• To approve operational arrangements for delivery level partnerships / joint working arrangements with other public, private, voluntary and community sector organisations</li> <li>• To take decisions on behalf of the Council when officially representing the Council on a partnership or outside body subject to advance notice of the issue having been given to the Council's representative.</li> </ul>	<ul style="list-style-type: none"> <li>(a) within the Council's policies and objectives;</li> <li>(b) in accord with legislation, statutory guidance, good practice and the Constitution;</li> <li>(c) within Budget.</li> </ul> <p>All decisions taken by Cabinet Members must follow the relevant procedures set out in Part 1, Section 8, para 8.6.</p> <p>All proposed Leader or Cabinet Member Non-Key and Key Decisions must be notified to the Service Manager – Executive, Democratic Services together with any report(s) or other information supporting the decision.</p> <p>The Monitoring Officer or his/her representative will attend to advise the decision maker and ensure compliance with constitutional requirements when any Member Key or Non-Key Decision is taken.</p> <p>All decisions and supporting material will be published via the Council's website and available for public inspection at any time – excluding any exempt or confidential documents or information.</p> <p>Joint Non-Key decisions can be made by Cabinet Members on matters within their collective remits. Joint Key Decisions can be made by two or more members of the Cabinet.</p> <p>Approval of partnership operational arrangements and memberships rests with the Cabinet Member with the greatest input. For true cross-cutting partnerships, this responsibility rests with the relevant Cabinet Member when identified.</p> <p>If a Cabinet Member is absent or otherwise unable to act, the Leader (or in his / her absence the Deputy Leader) can take the decision on their behalf.</p> <p>If a Cabinet Member wants to take a Key or Non-Key Decision against Officer advice, or there is uncertainty or a dispute as to who</p>
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<p><b><u>Specific delegations to individual Cabinet Members</u></b></p> <p>The <b>Cabinet Member- Resources</b> can:</p> <ul style="list-style-type: none"> <li>• declare land / property surplus to the requirements of the Council and agree its disposal regardless of its capital value or annual rental income / leasehold consideration.</li> <li>• acquire land and property regardless of its capital value or leasehold consideration / annual rental cost.</li> <li>• approve capital sales at an under-value.</li> <li>• approve any changes to the Council’s office portfolio and authorise any necessary property requirements, including disposal, office relocations, acquisitions, leases, etc</li> <li>• approve any capital or revenue virements above £250,000 in consultation with the relevant Cabinet Member(s) and Director of Finance.</li> <li>• receive and approve the financial and performance monitoring reports on behalf of the Cabinet, with a requirement for subsequent notification to all Cabinet Members and the Chairs of the Scrutiny Committees.</li> </ul> <p>The <b>Cabinet Member-Resources</b> approves the establishment of all earmarked reserves and all new trading accounts and activities.</p> <p>The <b>Cabinet Member-Highways and Transport</b> can approve, amend or rescind traffic management schemes.</p> <p>The <b>Cabinet Member- Resources</b> approves staffing levels as part of the Medium Term Financial Plan.</p>	<p>may act, the matter will be decided by the Leader (or Deputy Leader in the absence of the Leader) in consultation with relevant Officers.</p> <p><b>Consultation requirements pre-decision:</b></p> <p>The consultation requirements for member decisions are set out in Part 1, Section 8, paras 8.6.14 (Key Decisions) and 8.6.15 (Non-Key Decisions)</p> <p><b>Publication requirements pre-decision:</b></p> <p>Publication requirements in relation to Member / Officer Key Decisions before the decision is taken are set out in paragraphs Part 1, Section 8, paras 8.6.17 to 8.6.20.</p> <p><b>Publication requirements post decision:</b></p> <p>Publication requirements in relation to Member / Officer Key Decisions, Member Non-Key Decisions, and Officer Non-Key Decisions taken under direct delegated authority after the decision is taken are set out in Part 1, Section 8, paras 8.6.21 and 8.6.22.</p> <p><b>Scrutiny call-in of Key Decisions:</b></p> <p>The process for the call-in of Key Decisions by the Scrutiny Committees is set out in Part 1, Section 6, paras 6.2.6 and 6.2.7.</p> <p><b>Non-Key Member Decisions - referral back</b></p> <p>The process for Members to request a referral of a Non-Key Member Decision not yet implemented back to the decision taker is set out in Part 1, Section 6, para 6.2.8.</p>
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## 5.6 JUNIOR CABINET MEMBERS

5.6.1 The Support Members are not able to take decisions but they can advise the Cabinet and the relevant Cabinet Member. They will:

- (a) Support their relevant Cabinet Member to provide clear political leadership both within and outside of the County Council in order to help advance and deliver the Council’s priorities and key outcomes
- (b) Focus on information gathering and understanding key policy / service delivery in their areas of responsibility
- (c) Assist with the development of options and policies for consideration by the Cabinet and relevant Cabinet Member taking into account national policies and local circumstances

- (d) Brief and make recommendations to Cabinet and their relevant Cabinet Members and others on relevant issues in relation to policy and strategy development, service improvement or changes and decision making.
- (e) Represent or deputise for their relevant Cabinet Member at meetings or events as necessary. NB (The term 'deputise' does not include authority to take formal decisions.)
- (f) Promote and support good governance of the Council and its business.
- (g) Keep other Members of Council informed about their activities,
- (h) Maintain effective working relationships with Senior Leadership Team officers and other Officers.
- (i) Create and maintain effective relationships with partners and organisations to deliver the Council's priorities
- (j) Be accountable to their relevant Cabinet Member, and ultimately the Leader of the Council, for the development and delivery of policies and strategies to meet the outcomes required by the Council and the Cabinet.
- (k) Be accountable to their relevant Cabinet Member for supporting the commissioning and delivery of services to meet the outcomes required by the Council and the Cabinet. This includes supporting the delivery of County Plan priorities and Medium Term Financial Plan savings
- (l) Play a key role in supporting transformational programmes within their areas of responsibility
- (m) Play a key role in the delivery of specific projects within their areas of responsibility.

5.6.2 Where a Junior Cabinet Member is temporarily unable to perform their role e.g. due to illness, then the relevant Cabinet Member is able to appoint a temporary Junior Cabinet Member. In these instances the Leader of the Council will be consulted and the Monitoring Officer informed.

## **5.7 TRAFFIC REGULATION ORDER SUB-COMMITTEE**

5.7.1 The Leader has appointed a 3 member Traffic Regulation Order Sub-Committee whose function is to make decisions on Traffic Regulation Orders where there are significant objections to the proposed Order. The Sub-Committee has delegated powers to confirm the Order, make minor modifications or to refer it back to Officers for reconsideration of the scheme proposals.

5.7.2 The Economies & Communities Infrastructure Commissioning Director will determine whether a Sub-Committee meeting will be held in consultation with the local Member and Cabinet Member for Highways and Transport.

5.7.3 The Sub-Committee meets when required. The Chair of the Sub-Committee agrees the venue, time and meeting date. Cabinet members appointed to the Sub-Committee will not normally include any Cabinet member from the relevant district council area that relates to the Order. All three Sub-Committee members (or a substitute) must be present in order for there to be a valid meeting. The Sub-Committee's decisions are reported to Council in the Cabinet's regular report. Normally, the business of the Sub-Committee will be shown in the Cabinet Forward Plan of Key Decisions.

## 5.8 SOMERSET WASTE BOARD

5.8.1 **Functions:** The Leader has delegated to the Board the County Council's statutory functions as Waste Disposal Authority, together with the delegation of powers under Local Government Act 2003 in relation to the ability to charge for discretionary services such as the use of discretionary recycling sites/services that are not provided under Section 51 Environmental Protection Act 1990.

5.8.2 **Form and Composition:** The Board is a Joint Committee of Somerset County Council, Mendip District Council, Sedgemoor District Council, South Somerset District Council, Taunton Deane Borough Council and West Somerset Council. The Board was established under sections 101(5) and 102 of the Local Government Act 1972 and other relevant enabling legislation.

5.8.3 Each Council appoints two of its elected Members to be its representatives on the Board. One of the authority's appointed Members must be the relevant Cabinet Member for waste and/or the environment. Where a substitute takes the place of a Cabinet Member then the substitute must also be a Member of the Cabinet.

5.8.4 **Board decisions:** Aside from the Board itself, the following can take decisions with the agreement of the Board:

- (a) A Sub-Committee of the Board (a minimum of 3 Members representing 3 of the Partner Authorities);
- (b) The Administering Authority (under the Board's Scheme of Delegation);
- (c) The Managing Director (under the Board's Scheme of Delegation).

Delegation of a decision under (a) to (c) above does not prevent the Board taking the decision if it wishes to do so.

5.8.5 Board decisions are taken at a meeting in accordance with the Board's Forward Plan except where the General Exception Procedure or the Special Urgency Procedure applies.

5.8.6 **Access to Information:** The Board includes Members who are not on the Cabinet / Executive of any participating councils. Therefore, the Decision making Access to Information Procedure Rules in Part 1, Section 8, apply in accordance with the access to information provisions in Part VA of the Local Government Act 1972.

## 5.9 SUB-DELEGATION OF EXECUTIVE RESPONSIBILITIES:

5.9.1 All executive decision-making responsibilities can be delegated to an Officer subject to compliance with financial threshold limits. The Monitoring Officer maintains details of delegations from the Leader, Cabinet or Cabinet

Members within the Council and Cabinet Scheme of Delegation to Officers – see Part 1, Section 8.

5.9.2 A delegation does not prevent the discharge of a delegated responsibility by the person or body who agreed the delegation.

#### 5.10 **CABINET MEETING ARRANGEMENTS:**

5.10.1 **Meetings Calendar:** The Leader agrees the calendar of meetings for the Cabinet and publishes them on the Council's website. Special meetings can be called by the Leader or any 3 members of the Cabinet. The Cabinet normally meets at the Council's main offices in County Hall, Taunton.

5.10.2 **Public involvement at Cabinet Meetings:** Cabinet meetings are open to the public unless exempt or confidential information is being discussed. Members of the public may make a statement, ask a question or present a petition and the rules are set out in detail in Para 1, Section 8, paragraphs 8.6.35 and 8.6.36.

5.10.3 **Non-Cabinet Member involvement in Cabinet meetings:** The Chair may allow non-Cabinet Members to speak on any Cabinet item.

5.10.4 **Cabinet quorum:** A minimum of 4 members are required to have a valid meeting of the Cabinet. The quorum for a Sub-Committee of the Cabinet shall be fixed when the Sub-Committee is established. Only a member of the Cabinet may substitute for a member of a Cabinet Sub-Committee.

5.10.5 **Cabinet decision making:** Part 1, Section 8 – Decision-making Access to Information Procedure Rules detail the Cabinet decision making processes. Paragraphs 4.10, 4.15 to 4.18 and 4.20 to 4.21 in Part 1, Section 4 – Full Council Procedural Rules – apply in full or in part to meetings of the Cabinet, the Traffic Regulation Order Sub-Committee and Somerset Waste Board.

5.10.6 **Who can put items on the Cabinet agenda?** The following can put items on a Cabinet agenda:

- (a) The Cabinet itself;
- (b) The Full Council;
- (c) A Scrutiny Committee;
- (d) Any member of the Cabinet;
- (e) The Chief Executive;
- (f) The Monitoring Officer;
- (g) The County Solicitor;
- (h) The Chief Finance Officer / Section 151 Officer;
- (i) Any Officer from the Senior Leadership Team.

5.10.7 **Leader / Cabinet reports to Council:** A report of Cabinet meetings and all Key decisions taken is made to each Full Council meeting. Individual

Cabinet Members also present annual reports to the Full Council of their activities.

**5.11 CABINET DECISION-MAKING ARRANGEMENTS:** The procedures for taking Key and Non-Key Decisions are detailed in Section 8. This includes the rights of the public to:

- (a) Access details of decisions and related reports before and after they are taken; and
- (b) Make representations to the decision maker before a decision is taken.

## Section 6 – Council Committees

### **ARRANGEMENTS**

**6.1.1 COMMITTEES OF THE COUNCIL:** The Council has appointed standing Committees as detailed in sections 6A, 6B and 6C to undertake the functions specified. Committee functions cannot be delegated to the Leader unless allocated by the Council as a ‘local choice’ function.

*Local Choice’ functions (as defined in Part 1, Section 1) are indicated in italics.*

**6.1.2 COMMITTEE APPOINTMENTS:** Full Council appoints all members of Committees on an annual basis.

**6.1.3 COMMITTEE CHAIRS AND VICE-CHAIRS:** Full Council appoints the Chairs and Vice-Chairs of Committees on an annual basis unless otherwise indicated in sections 6A, 6B and 6C.

**6.1.4 SUBSTITUTION ON COMMITTEES:** Substitutes are allowed on the Council’s Committees except the Pensions Committee, the Officer Appeals Committee, the Somerset Health and Wellbeing Board and the Pensions Board. In the case of the Regulation Committee substitutes must be trained in planning and rights of way issues. Where substitution is allowed, the nomination of a substitute is for the entire meeting, not a part of it, even if the named Member of the Committee is available for part of the meeting.

**6.1.5 MEETING DATES:** Committee meeting dates and times are published on the Council’s website, the public notice board at County Hall, and at any external venue used for a meeting. Committees normally meet in public at the Council’s main offices in County Hall, Taunton. All of the Committees meet on a regular cycle except the Officer Appeals Committee which meets as and when necessary. The Officer Appeals Committee generally meets in private because of the nature of its business.

**6.1.6 COMMITTEE BUSINESS – PUBLIC INVOLVEMENT:** Committee meetings are open to the public unless exempt or confidential information is being discussed. Members of the public can find out about the business to be considered and may attend to make a statement, ask a question or present a petition where the agenda makes such provision. The rights of members of the public are set out in the rules detailed in Part 1, Section 8.

**6.1.7 NON-COMMITTEE MEMBER INVOLVEMENT IN COMMITTEE MEETINGS:** A Chair may allow a Member who is not a member of a Committee to speak on an item of business at a formal Committee meeting.

## Section 6A – Scrutiny Committees

### 6.2 SCRUTINY FOR POLICIES AND PLACES COMMITTEE / SCRUTINY FOR POLICIES, CHILDREN AND FAMILIES COMMITTEE / SCRUTINY FOR POLICIES, ADULTS AND HEALTH COMMITTEE

#### FUNCTIONS

6.2.1 These Committees fulfil the statutory “overview and scrutiny” functions of the Council, to influence the decision makers and drive improvement in public services in Somerset. The Committees have no decision-making powers but have responsibilities delegated by Council.

#### Place

Functional areas that are the responsibility of the Committee are as follows:

- Environment & Countryside (and appointment of members to the Joint Waste Scrutiny Panel with the district councils)
- Planning
- Sustainability & Carbon Reduction
- The Economy
- Transport
- Highways
- Trading Standards
- Infrastructure and infrastructure projects
- Flooding & Water Management
- Cultural Services (eg, Libraries, Heritage)
- Corporate services (eg, ICT, Asset Strategy, Customers and Communities, Change Programme).

#### Children and Families

Functional areas that are the responsibility of the Committee are as follows:

- Investing in and improving school facilities
- Improving the health of children & young people
- Supporting educational achievement and improved outcomes for children & young people
- Improving young people’s prospects and skills (*shared with Cabinet Member for Resources & Economic Development*)
- Delivery of Personalisation Agenda and Personal Budgets
- Protect and care for the most vulnerable
- Support and recruit more adopters and fosterers of children
- Improve prospects of disadvantaged children and young people and their families, and those at risk of being disadvantaged
- Specialist services for children with disabilities
- Special Educational Needs
- Safeguarding children
- School admissions
- Academy conversions.

- Youth offending and targeted youth work
- Early years and children's centres
- Appointment of school governors

### Scrutiny for Policies, Adults and Health Committee

Functional areas that are the responsibility of the Committee cover personal services to individuals as follows:

- Health & Wellbeing (including Public Health Services)
- Education, Training & Skills
- Learning and Physical Disabilities
- Adult Care & Support Services
- Community Safety
- Somerset Armed Forces Community Covenant.

6.2.2 In respect of their functions, each committee will:

- (a) Advise the Cabinet, on the formative stages of key service developments and reviews;
- (b) Influence planned key decisions before they are taken;
- (c) Hold Cabinet decision-makers (including Officers) to account for Key decisions.
- (d) Question members of the Cabinet and/or committees and senior officers about their decisions and performance standards
- (e) Ensure that all the Council's performance management and assessment systems continually improve the Council's service delivery;
- (f) Assist the Cabinet / Council in budget and policy development;
- (g) Review delivery of key action plans (including external inspection action plans) and Council objectives through the achievement of outcomes;
- (h) Consider any matter affecting the County of Somerset or its inhabitants (specifically children in the case of Scrutiny Children and Families);
- (i) Ensure active engagement of Members, the public, media, stakeholders, partners and Officers in the work of the Council and the Committee and to enable the voice of the wider community to be heard within the Council;
- (j) Make reports and/or recommendations to the Full Council and/or the Cabinet, Council, other Committees and/or partner bodies;
- (k) Scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to discuss their activities and performance.

6.2.3 **FORM AND COMPOSITION:** Each Committee comprises 9 elected Members reflecting the political composition of the Council. In addition, the membership of the Scrutiny for Policies, Children and Families Committee includes 3 co-opted church representatives, 2 co-opted parent governor representatives, and 1 representative each from the Schools Forum and the Schools Compact, all with voting rights (which are full voting rights) on educational matters only. Members of the Cabinet cannot be members of these committees.



**6.2.4 JOINT HEALTH SCRUTINY:** For significant NHS proposals, eg, regional matters and ambulance NHS Trust matters, a Joint Overview and Scrutiny Committee of the relevant councils is appointed to provide a collective response. The Council's representatives to the Joint Committee (up to 4) are appointed by the Scrutiny for Policies, Adults and Health Committee. The Chief Executive approves the terms of reference, constitution and arrangements for such a Joint Committee on behalf of the Council.

**6.2.5 QUORUM:** A minimum of 5 elected members are required to be present for a valid meeting to take place.

**6.2.6 COMMITTEE BUSINESS:** The following can include items on scrutiny agendas:

- (a) The Committee itself;
- (b) Full Council;
- (c) The Leader;
- (d) The Cabinet collectively;
- (e) Any Member of the Committee. The non-elected Members of the Scrutiny for Policies, Children and Families Committee may include items on the Committee's agendas in relation to education;
- (f) Any other Member, for an issue affecting their division and where all other methods of resolution have been exhausted;
- (g) The Monitoring Officer;
- (h) The County Solicitor;
- (i) Any Officer from the Senior Leadership Team;
- (j) The Scrutiny Officer.

### **CALL-IN OF KEY DECISIONS**

**6.2.7** "Call-in" is a facility which Members can use to challenge Key Decisions where a scrutiny committee has not been involved prior to the decision being taken or where a Member believes a decision has been taken without the proper process having been followed.

**6.2.8** Call-in of Key Decisions is subject to the following rules:

- (a) General provisions:
  - (i) Call-in should be used on an exception basis and not to unnecessarily delay Council business;
  - (ii) An individual Key Decision should normally only be subject to scrutiny once, whether pre or post decision;
  - (iii) Key Decisions cannot be called in where the decision requires urgent implementation. Urgent implementation requires the approval of the Leader of the Council and the Chair of the relevant Scrutiny Committee;
  - (iv) Call-in only applies to decisions. Recommendations (for example, made by the Cabinet to Council) cannot be called-in.

- (b) Scrutiny of Key Decisions before they are taken: This should focus on ensuring that the decision-maker has all the necessary information, to take a fully informed decision and that any procedures have been properly followed. Any scrutiny review at this stage should not preempt the decision. The decision-maker must take the views of the relevant Scrutiny Committee into account before taking the decision.
- (c) Scrutiny of Key Decisions after they are taken but before they are implemented:
  - (i) Key Decisions are published to all Members and the public (via the website) within 2 working days of the decision date;
  - (ii) Key Decisions (unless urgency is agreed) must be called-in within 5 working days of publication or the decision will be implemented automatically.
  - (iii) Any Member may request a call-in but the call-in must be supported by a Member of the relevant Scrutiny Committee and agreed by the Chair (or Vice Chair in their absence) of that Committee in order to be formally considered. The call-in must be submitted in writing or by email to the Chair of the relevant Committee;
  - (iv) The Chair of the relevant Scrutiny Committee will consider call-in requests against the principles of good decision-making and will either agree the request or detail their reasons for rejecting the request for report to the next available meeting of the relevant Committee;
  - (v) A call-in must specify the subject matter, the reason(s) for it, information required to enable full consideration and the preferred outcome;
  - (vi) Each call-in will be considered at the next meeting of the relevant Scrutiny Committee unless an alternative is agreed with the decision-maker;
  - (vii) The Scrutiny Committee having considered a call-in will report to the decision-maker. The Committee also has the option of reporting direct to the Council as well as or instead of the decision-maker;
  - (viii) Where an item has been subject to pre-decision scrutiny of the process, post decision call-in should normally only relate to the decision itself;
  - (ix) If there is no pre-decision scrutiny of an item then the process and/or the decision may be the subject of call-in.
- (d) Scrutiny of Key Decisions after implementation: This should only occur where the decision-maker was required to make a decision that was time critical or at a later stage to gauge the effect of the decision. Scrutiny in these circumstances is not part of the call-in process.

**6.2.9 REFERRAL OF NON-KEY MEMBER DECISIONS:** Non-key member decisions can be referred back to the decision-maker by Members prior to implementation as follows:

- (a) Non-Key Member Decisions are published to all Members and the public on the Council's website within 2 working days of the date of decision;
- (b) Any Member with the support of their Group Leader (or in their absence, the Deputy Group Leader) and the agreement of the Chair of the relevant Scrutiny Committee may refer a proposed decision back to the decision-maker within 3 working days of it having been published. The decision-maker will consider the referral prior to confirming the decision and its implementation.
- (c) If there is no referral the decision will be implemented automatically at the expiry of the 3 day notification period.
- (d) The only exception to this rule shall be 'urgent' decisions requiring immediate implementation. A decision will be urgent if any delay would, or would be likely to, significantly prejudice the Council's or the public interests.

**6.2.10 MEMBERS AND OFFICERS ATTENDING SCRUTINY**

**COMMITTEES:** A Scrutiny Committee can **require** a Member of the Cabinet, the Chief Executive and/or an appropriate Senior Officer or Officers (as agreed the Chief Executive) to attend a meeting in order to explain matters within their remit including any particular decision or series of decisions. Officers identified must attend.

**6.2.11 ATTENDANCE BY OTHERS AT SCRUTINY MEETINGS:** A Scrutiny Committee can **invite** others to address their meetings, discuss issues of local concern and/or answer questions. Attendance is optional.

**6.2.12 REPORTING:** A Scrutiny Committee can report and make recommendations to the Leader / Cabinet or the Council, as appropriate, and to partner public bodies involved with Community Safety or the NHS. Each Committee presents a summary of its work to each Full Council meeting and reports annually to Full Council on its work, its future work programme and recommendations for improving the way it carries out its functions, if appropriate.

**6.2.13 FORWARD WORK PLANS OF BUSINESS:** The chairs and vice-chairs of each committee meet as and when required to organise and co-ordinate the forward work programmes of business.

## Section 6B – Decision-making Committees

### 6.3 REGULATION COMMITTEE

6.3.1 **FUNCTIONS:** The Committee undertakes a range of regulatory functions and other functions as delegated by the Council. These are the responsibilities of the Council for:-

- (a) Town and country planning and development control (except any functions reserved to the Full Council meeting or the Cabinet)
- (b) Registration of common land and town or village greens
- (c) Assertion and protection of public rights of way
- (d) The issue of fire certificates under Section 5 of the Fire Precautions Act 1971
- (e) *Contaminated land*
- (f) *The control of pollution or the management of air quality*
- (g) Making byelaws
- (h) The approval of premises for the solemnisation of marriages
- (i) The Registration Service and Registrars
- (j) *Any function under a local Act*
- (k) *The service of an abatement notice in respect of a statutory nuisance*
- (l) *The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area*
- (m) The inspection of the authority's area to detect any statutory nuisance
- (n) Delegating the Committee's functions to another authority

*(‘Local Choice’ functions [as defined in Part 1, Section 1] delegated by the Council)*

except for functions delegated to the Economic & Community Infrastructure Commissioning Director (see Part 1, Section 8, paragraph 8.5.6), but subject nevertheless to the Committee retaining an overseeing role in respect of such functions.

6.3.2 **FORM AND COMPOSITION:** The Committee comprises 9 Members and the membership reflects the political composition of the Council. Membership must not include Cabinet Members. Substitution is allowed but excluding Cabinet Members.

6.3.3 **QUORUM:** A minimum of 5 members is required for a valid meeting of the Committee.

6.3.4 **COMMITTEE BUSINESS:** The following can include items on the Committee's agenda:

- (a) The Committee itself
- (b) Full Council
- (c) A member of the Committee
- (d) The Chief Executive
- (e) The Monitoring Officer

- (f) The County Solicitor
- (g) Relevant Senior Leadership Team officers.

6.3.5 **REPORTING:** In the event that a report is necessary, the Committee reports to Full Council.

6.3.6 **CODE OF PRACTICE – COMMONS REGISTRATION, PLANNING CONTROL, RIGHTS OF WAY:** The Committee must have regard to the Code of Practice - Commons Registration, Planning Control and Rights of Way (contained within Part 2 of the Constitution) which sets out procedures to guide Members in decision-making on regulatory matters.

## 6.4 PENSIONS COMMITTEE

6.4.1 **FUNCTIONS:** The Committee discharges the functions of the Council in its role as the administering authority of the Somerset County Council Pension Fund. Principal responsibilities of the Committee are to decide investment policy objectives, manage the investments and monitor their performance, consult with stakeholders and consider requests from organisations wishing to join the Fund.

6.4.2 **FORM AND COMPOSITION:** The Committee comprises 4 elected Members of the County Council (the membership reflects the number of Members that each political party has on the Full Council), 1 elected Member representative of the district councils in Somerset, 1 representative of the Avon and Somerset Police and Crime Commissioner, 1 representative of all other employers, and 1 representative of the individuals covered by the Fund (current active, deferred and pensioners). All Members of the Committee are voting members. With the Chair's casting vote, those Members of the Committee appointed by the County Council must form a majority of voting members. The Committee does not have a Vice-Chair.

6.4.3 **QUORUM:** A minimum of 3 elected members is required for a valid meeting of the Committee.

6.4.4 **COMMITTEE BUSINESS:** The following can include items on the Committee's agenda:

- (a) The Committee itself
- (b) Full Council
- (c) A member of the Committee
- (d) The Chief Executive
- (e) The Monitoring Officer
- (f) The County Solicitor
- (g) The Section 151 Officer.

6.4.5 **REPORTING:** The Committee submits an Annual Report to Full Council.

## 6.5 **AUDIT COMMITTEE**

**6.5.1 FUNCTIONS:** In summary, the Committee approves internal audit arrangements, considers external audit reports and deals with other governance matters including risk.

The Committee:

- (a) Approves (but not directs) internal audit's strategy, plan and performance;
- (b) Reviews summary internal audit reports and the main issues arising, and seeks assurance that action has been taken where necessary;
- (c) Considers the reports of external audit and inspection agencies;
- (d) Ensures that the Council's assurance statements, including the Annual Governance Statement, properly reflect the risk environment and any actions required to improve it;
- (e) Ensures that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process and effective financial governance is actively promoted;
- (f) Reviews the financial statements, external auditor's opinion and reports to Members, and monitors management action in response to the issues raised by external audit.
- (g) Approves the annual accounts of the Council and the Annual Governance Statement, together with considering the Matters Arising from the Accounts Audit.

**6.5.2 FORM AND COMPOSITION:** The Committee comprises 9 Members and the membership reflects the political composition of the Council. Membership must not include Cabinet Members. Substitution is allowed but excluding Cabinet Members.

**6.5.3 QUORUM:** A minimum of 5 members is required for a valid meeting of the Committee.

**6.5.4 COMMITTEE BUSINESS:** The following can include items on the Committee's agenda:

- (a) The Committee itself
- (b) Full Council
- (c) A member of the Committee
- (d) The Chief Executive
- (e) The Monitoring Officer
- (f) The County Solicitor
- (g) The Chief Internal Auditor
- (h) The Section 151 Officer.

**6.5.5 REPORTING:** The Committee submits an Annual Report to Full Council and reports to the Leader / Cabinet as necessary.

## 6.6 HR POLICY COMMITTEE

6.6.1 **FUNCTIONS:** The Committee formally:

- (a) Determines, monitors, reviews and amends staffing policies and practices to secure the best use and development of the council's staff, including the power to deal with all matters relating to staff terms and conditions.
- (b) Acts as the Council's Remuneration Committee for Chief Officers pay (with the exception of the post of Monitoring Officer).

Note: The term 'Chief Officers' as used in this delegation reflects the legislative definition. It applies to all officers within the Council's Senior Leadership Team.

In exercising the functions outlined above, and in accordance with the Council's approved Pay Policy Statement, the Committee:

- (a) decides whether national pay awards for SLT Officers are applied locally and where it is agreed that these awards will be paid these will be reflected in the next annual review of the Pay Policy Statement
- (b) reviews on at least an annual basis the pay and grading structure of the Council (including SLT officers grades and salaries) and makes recommendations for any changes considered necessary to Full Council by way of a revised Pay Policy Statement .

6.6.2 The Committee also has responsibility for employee relations on behalf of the Council. Specifically it will meet as a forum for consultation 3 times a year with representatives of the trades unions and senior officers as set out below. The Committee will then formally consider recommendations arising from these consultative meetings and make decisions or recommendations to Council as necessary. Functions of this meeting:

- (a) To act as a forum for consultation to secure co-operation between the Council and its employees and between the different services of the County Council.
- (b) To discuss the conditions of service, hours of employment, remuneration, training and health, safety and welfare at work of employees of the Council within the terms of overall County Council HR Policies and Procedures and make recommendations as necessary.
- (c) To take or recommend such action as it may be deemed necessary or desirable to prevent differences and misunderstandings between the County Council and its employees, provided that no question of individual discipline, remuneration, promotion or efficiency shall be within the purview of the joint meeting.

- (d) To consider any proposed legislation affecting employees of the County Council.
- (e) To encourage, consider and recommend improvements to the organisation, and the study of methods of administration including recruitment and training with a view to improving the efficiency of the service.
- (f) To consider any matter which may be referred to it by a standing Committee of the County Council, the Central Safety Committee or alternatively a matter which it may be requested to deal with jointly by the Joint Secretaries.

**6.6.3 FORM AND COMPOSITION:** Meeting as a Committee of the Council, the Committee comprises 6 Members and the membership reflects the political composition of the Council. The Committee does not have a Vice-Chair.

**6.6.4 QUORUM:** A minimum of 3 members is required for a valid meeting of the Committee.

**6.6.5 COMMITTEE BUSINESS:** The following can include items on the Committee's agenda:

- (a) The Committee itself
- (b) Full Council
- (c) A member of the Committee
- (d) The Chief Executive
- (e) The Monitoring Officer
- (f) The County Solicitor
- (g) The HR & OD Director.

**6.6.6 REPORTING:** The Committee reports to Full Council on relevant matters as required.

**6.6.7 CONSULTATIVE MEETINGS WITH THE TRADE UNIONS:** The consultative meetings will be closed to the public and press although recommendations arising from them will be considered at scheduled formal meetings of the Committee held under the requirements of the Local Government and Housing Act 1989.

**6.6.8** The position of chair of the joint consultative meeting with the unions will rotate annually between the chair of the HR Policy Committee and a trade union representative.

**6.6.9** The joint consultative meetings will continue to be supported by relevant officers.



## 6.7 OFFICER APPEALS COMMITTEE:

6.7.1 **FUNCTIONS:** To hear and determine all Officer appeals against dismissal (except appeals resulting from posts becoming redundant) or against the rejection of a complaint under the grievance procedure, in respect of all employees of the Council except where other specific provision is made.

6.7.2 **FORM AND COMPOSITION:** The Committee comprises 6 Members and the membership reflects the political composition of the Council. To undertake each individual hearing, a minimum of 3 Members are selected from the total membership. The members convened for each hearing appoint a Chair for the duration of the hearing.

6.7.3 **QUORUM:** A minimum of 3 members are required for a valid meeting of the Committee.

6.7.4 **COMMITTEE BUSINESS:** The HR & OD Director refers individual cases to the Committee.

6.7.5 **REPORTING:** In the event that a report is necessary, the Committee reports to Full Council.

## 6.8 CONSTITUTION AND STANDARDS COMMITTEE

6.8.1 **FUNCTIONS:** In summary, the Committee's main responsibilities relate to updating the Council's Constitution and the policies and procedures in relation to members' standards of conduct.

### Constitutional matters:

The Committee is responsible for:

- (a) Maintaining an effective, up to date and legally compliant Constitution.
- (b) Considering proposals from Council committees for changes to the constitutional arrangements of the Council.
- (c) Approving in-year changes to individual parts of the Constitution and submitting an annual report to the Council recommending a revised Constitution for approval to the Council's Annual General Meeting. See notes below.
- (d) Taking all required decisions in respect of the County Council elections;
- (e) Overseeing the Council's input and response to boundary reviews as required by the Boundary Commission.

Notes: The delegation set out in (c) above exclude approval of:

- Any changes to the operational arrangements of the Council including the Committee structure – which will be referred to Council for approval as a recommendation

- The Scheme of Members' Allowances which is approved by the Council on the recommendation of the Joint Independent Remuneration Panel;
- The Council's executive arrangements , which are the responsibility of the Leader of Council;
- Any change to the Council's model of democratic governance under the Localism Act 2011.

#### Conduct matters:

The Committee:-

- Has responsibility for promoting high standards of conduct by Members, Co-opted Members and Officers and for the policies and processes which support this aim.
- Advises on the induction and training of Members and Co-opted Members on standards of conduct ;
- Monitors the operation of the Members' Code of Conduct and recommends any changes considered necessary to the Code to the Council for approval.
- Has responsibility for overseeing the Standards of Conduct for officers and recommending any changes considered necessary to the Council for approval
- Manages the members' and officers' registers of interests and gifts / hospitality;
- Monitors the Council's Whistleblowing Policy and make recommendations to the Council in respect of any proposed changes.

The Committee has no role in considering or determining member complaints.

**6.8.2 FORM AND COMPOSITION:** The Constitution and Standards Committee comprises of 1 elected member per political group (currently 5 elected Members) [but no Cabinet Members] and 5 Co-opted Members without voting rights. Substitutes will be permitted for the elected members appointed to the Committee. The Chair is appointed by the Council on an annual basis. Council has agreed to waive the political proportionality requirements for appointments to the Committee to enable all of the political groups on the Council to be represented.

**6.8.3 QUORUM:** A minimum of 3 members is required for a valid meeting of the Committee.

**6.8.4 COMMITTEE BUSINESS:** The following people and bodies may include items on the Committee's agendas:

- The Committee itself;
- Full Council;
- The Leader;
- The Chair of any Council Committee;
- A member of the Committee, including a co-opted member
- The Chief Executive;

- (f) The Monitoring Officer;
- (g) The Chief Finance Officer / Section 151 Officer;
- (h) The County Solicitor.

6.8.5 **REPORTING:** The Committee shall make an annual report to Council and shall report as necessary outside of these occasions. To reflect the importance of the Committee its reports to Council always appear at the beginning of the Council agenda before any other reports.

## 6.9 SOMERSET HEALTH AND WELL-BEING BOARD

### FUNCTIONS

6.9.1 The Board, on behalf of the County Council and the Somerset Clinical Commissioning Group (SCCG), identifies and agrees health and wellbeing needs and priorities across Somerset through:

- (a) The regular refresh and publication of the Joint Strategic Needs Assessment (JSNA) to support evidence-based prioritisation, commissioning and policy decisions;
- (b) The preparation, agreement and publication of the Somerset Health and Wellbeing Strategy (SHWBS). The SHWBS sets a high level joint strategic vision for health and wellbeing, taking into account the JSNA and the Annual Public Health Report, as well as national policy developments and legislation.

Organisations represented on the Board have a duty to have regard of the strategy and are held to account for their contribution to delivery of outcomes.

6.9.2 The Board also:

- (a) Oversees, where appropriate, the use of resources across a wide spectrum of services and interventions, to ensure that the SHWBS and priority outcomes are achieved and to drive a genuinely collaborative approach to commissioning, including the co-ordination of agreed joint strategies.
- (b) Supports the inclusion of the public, patients and communities in the setting of strategic priorities, including (but not solely) through the involvement of local Healthwatch.
- (c) Communicates and engages with local people in how they can achieve the best possible quality of life and be supported to exercise choice and control over their own health and wellbeing and that of the people living around them.

6.9.3 **FORM AND COMPOSITION:** The Board is a Committee of the County Council established under Section 102 of the Local Government Act 1972 as amended in relation to the Board. The base membership of the Board is set out in the legislation and the Council has authority to appoint additional Board

members. The membership as agreed by the Council includes 5 elected members of the Council. The Leader of the Council appoints the Council's representatives on the Board. The Leader of Council also has responsibility for appointing the Chair and the 2 Vice-Chairs of the Board. The Board reports to Full Council and to the Cabinet on relevant matters.

**6.9.4 THE BOARD'S CONSTITUTION:** The Board has its own Constitution agreed by the Council and other constituent bodies setting out the procedural arrangements for its business and meetings arrangements.

**6.9.5 REPORTING:** The Board reports to Full Council and Cabinet on an 'as necessary basis'.

# Section 6C – Pensions Board

## LEGAL BACKGROUND

6.10.1 The Pensions Board is established under Section 5 of the Public Service Pensions Act 2013 and regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended).

6.10.2 The Board is established by Somerset County Council in its capacity as the Administering Authority of the Somerset County Council Pension Fund and operates independently of the Pensions Committee.

## FUNCTIONS

6.10.3 The Board's remit covers all aspects of governance and administration of the LGPS, including funding and investments.

6.10.4 The Board will exercise its duties in the following areas:

- (a) monitor compliance with the relevant legislation and Codes of Practice set by The Pensions Regulator;
- (b) review and ensure compliance of the Fund's:
  - (i) governance compliance statement
  - (ii) funding strategy statement
  - (iii) pension administration strategy statement
  - (iv) discretionary policy statement
  - (v) communications policy statement
  - (vi) statement of investment principles
  - (vii) annual report and accounts
- (c) review and scrutinise the performance of the Fund in relation to its governance and administration, policy objectives and performance targets;
- (d) ensure policies and processes are in place so that employers comply with their obligations under the regulations;
- (e) review the processes for setting strategy, policy and decision-making and ensure they are robust;
- (f) agree the annual internal audit plan for the Fund;
- (g) consider the output of any internal audit work carried out on the Fund;

- (h) consider the external audit report on the Fund's Annual Report and Statement of Accounts;
- (i) review the Fund's risk register;
- (j) monitor the Fund's Internal Dispute Resolution Procedures;
- (k) from time to time the administering authority may consult the Board or ask assistance on specific issues.

6.10.5 Under Regulation 106(8) the Board has the general power to do anything which is calculated to facilitate or is conducive or incidental to, the discharge of its functions.

## **FORM AND COMPOSITION**

6.10.6 The Board comprises of:

- (a) 3 employer representatives – 1 of whom is a county councillor
- (b) 3 employee representatives – 2 of whom are directly nominated by the Trades Unions

6.10.7 The Board's members are appointed by Full Council as per the requirements of the Board's Constitution and Terms of Reference.

6.10.8 The Chair of the Board shall be elected annually by the members of the Board and shall rotate between the employer and the employee representatives on the Board.

## **QUORUM**

6.10.9 The quorum for a meeting of the Board shall be 3 to include the Chair. The quorum must include one employer representative and one member representative.

## **BOARD MEETINGS ARRANGEMENTS**

6.10.10 Board meetings shall be conducted in accordance with its Constitution and Terms of Reference.

6.10.11 The Boards terms of reference shall be reviewed by the Council on the advice of the Board and on an annual basis to ensure that they remain fit for purpose and in accordance with any regulations and guidance issued by the Secretary of State. Any revisions will be agreed by the Council and by the Board.

# Section 6D – Code of Conduct Hearing Panel Arrangements

## **FORM, FUNCTION AND COMPOSITION**

6.11.1 The Code of Conduct Hearing Panel deals with the assessment, review and determination of complaints under the Members' Code of Conduct against Members and Co-opted Members where referred by the Monitoring Officer following consultation with the Council's Independent Person (IP). Where an investigation finds evidence of a failure to comply with the Code of Conduct and a local resolution is not appropriate or not possible, a Hearing Panel shall be appointed by the Leader on the request and advice of the Monitoring Officer to consider and determine the complaint.

6.11.2 Given the wider provisions in place for determining complaints against members, it is expected that these arrangements will only be required to be used in exceptional circumstances where the alleged breach of the Code of Conduct is particularly serious and a satisfactory outcome has not been achieved through the other stages of the process.

6.11.3 The Hearing Panel will comprise of 3 members:

- The Leader of the Council (or his/her nominated representative)
- The Leader of the largest opposition group (or his/her nominated representative)
- 1 other member from the opposition groups nominated by their group leader with the agreement of the other opposition group leaders.

6.11.4 Appointments to the Panel will be made by the Leader of Council on the basis of the nominations made by Group Leaders. If a Group Leader is the subject of the complaint to be considered, they will take no part in the selection of the members for the Panel. In these circumstances the nominations will be made by the Deputy Group Leader or the other members of a political group where there is no Deputy Group Leader.

6.11.5 The Panel will have authority to determine complaints and apply sanctions under the Council's procedure as required except where the decisions are not unanimous. In these circumstances the Panel's decision must be referred as a recommendation to Full Council for confirmation.

## **QUORUM**

6.11.6 The quorum for a meeting of the Panel shall be 3 members.

## **MEETING ARRANGEMENTS**

6.11.7 The Panel will be chaired by the Administration's appointed representative from within the membership set out in 6.11.3 above.

6.11.8 Prior to a hearing, there will be a 'case management' meeting involving the Chair of the Hearings Panel, the subject member, the Monitoring Officer and the County Solicitor to consider options for the procedure to be followed. Following this meeting, the Chair of the Hearing Panel, in consultation with the Monitoring Officer, will confirm the scope and content of the hearing panel process. This delegated authority includes agreeing the format of the hearing including whether with the agreement of the subject member there should be a full public hearing with witnesses etc or whether it could be dealt with in private session by way of written representations. All parties will be informed of the Chair's decision.

6.11.9 If it is decided that a full public hearing is held it will be held in public subject to the rules on exempt information and will be conducted on a relatively informal basis. However both parties will be able to make representations and call a limited number of witnesses to be agreed in advance with the Chair. At the end of the Hearing, the Panel, after consulting with the IP, will decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what 'sanction' or 'sanctions' should be imposed.

6.11.10 The Panel will be advised by the Monitoring Officer and/or the County Solicitor on the process to be followed and potential outcomes including the sanctions available to the Panel should the decision be made that the Code of Conduct has been breached.

6.11.11 At the conclusion of the evidence and following any confidential members' discussion to reach a draft decision, the Panel members will meet in exempt session with the MO, County Solicitor (in order to have access to legal advice), and the IP, to formally agree their decision prior to the decision and outcomes being confirmed to the subject member and published.

## **SANCTIONS**

6.11.12 Where the Hearings Panel confirms that a breach of the Code of Conduct has occurred, the range of actions available to the Panel is as follows:-

- (a) Reporting its findings to Council for information;
- (b) Recommending to the Member's Group Leader that the Member is removed from any or all Committees or Sub-Committees of the Council of which they are a member;
- (c) Recommending to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular cabinet responsibilities;
- (d) Instructing the Monitoring Officer to arrange training for the Member;
- (e) Removing the Member from all outside appointments to which he/she has been appointed or nominated by the authority;
- (f) Withdrawing facilities provided to the Member by the Council, such as a computer, website and/or email and internet access;



- (g) Excluding the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.

## Section 7 – Officer Arrangements

This section incorporates the Mandatory Standing Order requirements as designated in the Local Authorities (Standing Orders) (England) Regulations 2001. It also includes relevant requirements of the annual Pay Policy Statement as agreed by the Council.

### 7.1 **APPOINTMENT OF OFFICERS:**

7.1.1 **GENERAL:** The Head of Paid Service (the Chief Executive) is responsible to the Council for:

- (a) appointing sufficient Officers to deliver the Council's functions;
- (b) the Council's Senior Leadership Team (SLT) (see section 1 for the definition of the posts which comprise SLT) and the supporting officer structures to deliver agreed outcomes. The process for such reviews shall be decided by the Chief Executive following consultation with whoever he/she considers relevant. SLT comprises all officers within grades 1 to 3 in the Council's grading structure.

Any changes proposed to SLT and supporting officer structures are subject to consultation with the Cabinet and informing Full Council of the changes. Changes will be agreed via a formal decision taken by the Chief Executive.

The Council's Pay Policy Statement, senior management structure and pay details and a description of the roles of the statutory officers of the Council is available to view on the Council's website via the following link:

<http://www.somerset.gov.uk/organisation/senior-salaries-and-pay-policy/>

7.1.2 The Chief Executive has authority:

- (a) to appoint and dismiss all employees except where this function is specifically delegated to Members.
- (b) to approve changes to the terms and conditions of all SLT posts (and to include the Monitoring Officer) on the recommendation of the Appointments Panel or the Appointments Committee or on his / her own initiative and having obtained the agreement of the Leader of the Council . All decisions taken by the Chief Executive on such matters will be the subject of a formal Officer Decision which will be published on the Council's website as soon as it is confirmed
- (c) after having sought the agreement of the Leader, and after appropriate consultations, to agree:
  - (i) acting up arrangements into SLT positions (to include the Monitoring Officer but excluding the post of Chief Executive) to cover periods of temporary absence either planned or unplanned
  - (ii) emergency cover arrangements for the statutory Chief Officer roles (other than that of Chief Executive) where these positions become vacant between Full Council meetings. Any such agreement will

be subject to review and confirmation at the next available Full Council meeting.

7.1.3 The Chief Executive, having obtained the agreement of the Leader of Council, will approve the recruitment of interims at SLT (and to include the Monitoring Officer) on a case by case basis and based on a business case presented by the Appointments Panel.

### **SENIOR LEADERSHIP TEAM APPOINTMENTS (AND THE MONITORING OFFICER)**

7.1.4 Appointments to these posts must involve elected Members.

In addition, in the absence of full-time contracted employees in relevant SLT posts, appointments to the following interim posts are also subject to the requirements of section 7:

- Interim Director of Finance
- Interim Director of Children's Services
- Interim Deputy Director of Children's Services
- Interim Operations Director of Children's Services.

The Monitoring Officer post is not part of SLT but appointments to this post will similarly involve members.

7.1.5 Where a vacancy occurs in these appointments, the recruitment process requires the appointment of an Appointments Panel and then an Appointments Committee.

#### **Appointments Panel:**

7.1.6 The Panel reviews the terms and conditions of employment relating to the post and where appropriate makes recommendations to the Chief Executive for any changes; decides the appointments process or other course of action; and appoints the Appointments Committee to undertake the appointments process. This review includes reviewing the job and person specifications, the means of advertisement and short-listing arrangements. The Panel will then appoint an Appointments Committee. The Panel can convene virtually or meet as required.

7.1.7 If a Panel decides that no changes to terms and conditions are necessary when it reviews a vacant post (and that the salary will be advertised at the bottom of the range [the 'spot' for the grade] for posts on grades 1 to 3) then the Panel has authority to progress the recruitment without the need to seek further approvals. If a Panel wishes to make changes to the terms and conditions of a vacant post (other than the post of Chief Executive) then these are subject to the approval of the Chief Executive having obtained the agreement of the Leader of the Council. This includes where a Panel wishes to advertise a salary for a post on grades 1 to 3 (other than the post of Chief Executive) above the 'spot' at the bottom of the range. This must be the subject of a Panel recommendation to the Chief Executive for decision. If the

Panel's recommendations for changes to terms and conditions relate to the post of Chief Executive then Full Council must agree these changes. In all cases the Panel will appoint the Appointments Committee.

7.1.8 In respect of the appointment of interims to SLT posts (including the post of Monitoring Officer) the Panel will present a business case to the Chief Executive which takes into account:

- value-for-money for the taxpayer
- the evaluated grade of the post to be covered
- the public profile of the post
- risks to the Council
- the labour market, both nationally and locally in the South West, for interims providing cover for similar posts in councils of a similar size

7.1.9 The Panel comprises 3 members, the Leader of the Council, the Leader of the largest Opposition Group, and the Deputy Leader of the Council (or their nominated representatives) with any relevant Cabinet Members as consultees.

### **Appointments Committee**

7.1.10 The Committee will:

- (a) Interview all short-listed candidates and either
- (b)
  - Appoint a suitable candidate to the post; or
  - In the case of the Chief Executive make a recommendation to the Full Council who must approve the proposed appointment before an offer of appointment is made; or
  - Follow any other course of action decided upon by the Appointments Panel.

7.1.11 The Committee comprises a maximum of 5 Members including:

- (a) The Leader of the Council (or his/her nominated representative)
- (b) The Leader of the largest Opposition Group (or his/her nominated representative)
- (c) Up to 3 other Members of the Council selected in accordance with the rules of political proportionality and including the relevant Cabinet Member.

Notes:

- (a) It is a statutory requirement that at least 1 member of an Appointments Committee must be a Member of the Cabinet.
- (b) The Committee appoints its own Chair.
- (c) All Members of the Committee must have up-to-date knowledge of and have received training in the areas of Recruitment and Equalities.
- (d) The selection process must be conducted in accordance with the Council's agreed Code of Practice.

7.1.12 An offer of employment to these posts shall only be made where no justifiable objection has been made by the Cabinet member.

7.1.13 If the Committee during the course of an appointment process wishes to vary the terms and conditions or the salary already agreed for a specific post, then such a proposal is subject to the approval of the Chief Executive having obtained the agreement of the Leader of the Council. The exception to this is where the Committee's recommendations relate to the appointment of the Chief Executive where only Full Council may amend the terms and conditions to be applied to the post.

7.1.14 The Appointments Committee will interview candidates for interim appointments at SLT (and to include the post of Monitoring Officer) level to assess their suitability for the role and will confirm appointments.

7.1.15 Chief Officer level interim appointments will be subject to formal review by the Chief Executive at the end of six months and at six monthly intervals thereafter to assess whether there is a requirement to retain their services. The original Appointments Committee will be consulted where the Chief Executive proposes to extend the engagement of an interim. The final decision on the extension of an interim rests with the Chief Executive.

#### **Appointment of Agency Interims below Chief Officer level**

7.1.16 All interim appointments below Chief Officer level will be sourced by the relevant Chief Officer or the Chief Executive where a Chief Officer is unable to act. If this interim is to be employed at a rate of over £500 per day:

- (a) The appointment will be subject to a formal review process at the end of the first six months and six monthly thereafter; and
- (b) Any decision to extend the engagement of such an interim will require the approval of the Chief Executive.

7.1.17 All other interim appointments will be subject to a formal review process at the end of the first six months and six monthly thereafter and the decision to extend the engagement of such appointments rests with the relevant Chief Officer.

7.1.18 **VOTING ON OFFICER APPOINTMENTS:** Where two or more candidates are interviewed for an appointment to a senior post, and there is not a majority of votes cast in favour of one candidate the candidate receiving the least number of votes will be disregarded and a fresh vote taken, and so on until one candidate receives a majority of the votes.

7.1.19 **OTHER OFFICERS:** Appointment of all other Officers is the responsibility of the Chief Executive as the Head of the Paid Service, or the relevant Senior Leadership Team Officer as authorised by the Chief Executive. Members cannot be formally involved in these appointments but

leading members may be involved on an informal basis. Guidance on this involvement is available from the HR & OD Director.

**RECRUITMENT AND APPOINTMENT – DECLARATIONS:** Note: For the purpose of these paragraphs, ‘Senior Officer’ means any Officer holding an appointment on spinal column point SCP32 or above.

7.1.20 Candidates for appointment must state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing member, an ‘additional voting or non-voting Member’ or a Senior Officer of the Council; or of the partner/spouse of such persons. Failure to make such a declaration will render the candidate disqualified for the appointment and, if appointed, liable to dismissal.

7.1.21 Every Member, ‘additional voting or non-voting Member’ of a Committee and Senior Officer of the Council, will inform the Monitoring Officer in writing of any relationship known to them to exist between themselves and any person whom they know is a candidate for an appointment under 7.1.2 above, as soon as they are aware of that person’s candidature. The Monitoring Officer will report any such disclosure to the Appointments Committee.

7.1.22 A candidate who is related to a member or an Officer will only be appointed with the agreement of the relevant Senior Leadership Team Director or an Officer nominated by him/her.

#### **SEEKING SUPPORT FOR APPOINTMENT:**

7.1.23 An applicant who directly or indirectly seeks the support of a Member or ‘additional voting or non-voting Member’ of a Committee for any appointment will be disqualified from appointment.

7.1.24 No Member or ‘additional voting or non-voting Member’ of a Committee will seek support for any person for any appointment with the Council.

7.1.25 **VACANCIES TO BE ADVERTISED:** All vacancies will be advertised in accordance with the County Council’s Code of Recruitment Practice unless otherwise agreed by the HR & OD Director.

7.1.26 **PAYMENT OF EXPENSES:** Every candidate interviewed will be reimbursed their expenses in accordance with the policy of the Council. In the event of no scale of allowance having been prescribed, the candidate will be paid their actual and reasonable travelling and out-of-pocket expenses. The successful candidate will normally only be reimbursed on taking up their appointment.

## **7.2 DISCIPLINARY ACTION (INCLUDING DISMISSAL) IN RELATION TO OFFICERS:**

7.2.1 **DEFINITION:** ‘Disciplinary action’ means any action confirmed in relation to alleged misconduct and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body. It only includes failure to renew a contract of employment for a fixed term where the Council has undertaken to renew such a contract.

7.2.2 **GENERAL:** The rules set out below are subject to:

- (a) Conditions of service approved by national negotiating bodies recognised by the County Council;
- (b) Special conditions of service prescribed by the Articles of Government and Voluntary Aided schools in relation to non-teaching staff in such establishments;
- (c) Where any disciplinary action is taken, regard having been had to the Council’s Disciplinary and Appeals Procedure.

### **SLT OFFICERS (AND INCLUDING THE MONITORING OFFICER):**

7.2.3 Any proposal for a **dismissal** of the **Chief Executive, the Section 151 Officer** or the **Monitoring Officer** under 7.2.1 above, will be determined by the Council on the recommendation of the Independent Persons’ (IPs) Panel comprising a minimum of 3 IPs selected to participate by the Chief Executive in accordance with the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015. The IPs will be selected from a joint Somerset Councils’ Panel of IPs. The Panel will be appointed by the Chief Executive (or the Head of HR where the Chief Executive is the subject of the proposed dismissal). The Panel shall be appointed a minimum of 20 days before the Council is due to meet to consider the dismissal.

7.2.4 Aside from the officers referred to in 7.2.3 above, a proposal for a dismissal of a SLT Officer will be determined by the Council on the recommendation of a special Panel of 6 Members appointed by the Leader of the Council (or his/her nominated representative) and comprising:-

- (a) The Leader of the Council (or his/her nominated representative)
- (b) The Leader of the largest opposition group (or his/her nominated representative)
- (c) 4 other Members of the Council selected by the Leader of the Council in consultation with the other Group Leaders and in accordance with the rules of political proportionality.

*Note: The membership of the Panel will not include any Member previously involved in an individual Officer’s case.*

7.2.5 Any question of dismissal on the grounds of redundancy (including voluntary), permanent ill-health or infirmity of mind or body in relation to a Chief Officer shall be determined by the Special Members' Panel appointed in accordance with 7.2.4 above with the exception detailed in 7.2.6 below

7.2.6 The exception is where a proposed financial settlement for an officer leaving the Council exceeds £100,000. In these circumstances only Full Council can agree the financial settlement.

7.2.7 Any question of disciplinary action in relation to a Chief Officer or the Monitoring Officer shall be determined by the Special Members' Panel appointed in accordance with 7.2.4 above.

7.2.8 The Special Members' Panel referred to in 7.2.4 above, when a proposal is made to dismiss one of these statutory post-holders, shall decide whether there is any justification to the proposal and therefore whether it needs to be investigated. If the decision is that an investigation is necessary the Panel will appoint an investigator. If the investigation confirms a potential dismissal, the Panel will refer the matter to the IPs' Panel for consideration and report to Council. If the investigation recommends disciplinary action then the Special Members' Panel shall consider and decide whether disciplinary action is justified and if so agree any action to be taken.

7.2.9 An Officer named in this section who is subject to possible dismissal or other disciplinary action has the right to be informed as to the basis of any action which may be taken and to appear before the relevant Panel prior to a decision being made or before a recommendation is made to Council.

7.2.10 The Officer concerned also has the right to appear before and address the Council before a dismissal is confirmed. The Panels and the Council will be advised by the Monitoring Officer and the HR & OD Director. If either of these officers is the subject of the Panel's report, the Chief Executive will make alternative arrangements for the provision of advice to the Council in place of that Officer.

7.2.11 Council can only give notice of dismissal to an Officer named in this section (other than the Monitoring Officer) where no justifiable objection has been made by any Member of the Cabinet.

7.2.12 A SLT Officer can be suspended for the purpose of investigating potential gross negligence or gross misconduct where such suspension is considered:

- (a) necessary to allow an investigation to take place;
- (b) otherwise desirable in the interests of the Council or the employee

Any such suspension shall be on full pay and terminate no later than 2 months beginning on the day on which the suspension takes effect. The power to suspend a SLT Officer rests with the Chief Executive, in consultation



with the Leader. If the Chief Executive is the subject of the proposed suspension, then the Leader shall have the power to suspend the Chief Executive following consultation with the other group leaders and on the advice of the HR & OD Director.

### **OTHER OFFICERS:**

7.2.13 As authorised by the Chief Executive as Head of the Paid Service, any SLT Officer, or a Senior Officer nominated by them, can suspend any employee suspected of potential gross negligence or gross misconduct where such suspension is considered:

- (a) Necessary to allow an investigation to take place, or
- (b) Otherwise desirable in the interests of the Council or the employee.

7.2.14 When suspended the employee is entitled to full salary or wages, subject to any agreement to the contrary that they may reach with the Council.

7.2.15 As authorised by the Chief Executive, any SLT Officer, or their nominated Senior Officer, can dismiss an employee:-

- (a) Employed under a fixed-term or temporary contract of employment which is ending;
- (b) Whose post is or is about to become redundant;
- (c) For unsatisfactory performance at the end of an agreed probationary period;
- (d) Medically certified to be incapable of discharging their duties by reason of ill-health;
- (e) Who has reached compulsory retirement age; or
- (f) For some other substantive reason.

7.2.16 A SLT Officer, or their nominated Senior Officer, can:-

- (a) Dismiss with due notice any employee who has previously been the subject of formal disciplinary action but whose standards of conduct or capability have remained unsatisfactory;
- (b) Dismiss any employee without notice where satisfied on reasonable enquiry that the employee has been guilty of gross misconduct; subject to prior consultation with the Monitoring Officer and the HR & OD Director.

7.2.17 Any appeal against dismissal or disciplinary action will follow the Council's Disciplinary and Appeals Procedure.

7.2.18 Any employee selected for compulsory redundancy has a right of appeal to the Redundancy Review Panel.

7.3 **GRIEVANCES:** Any grievance by a member of staff will be dealt with in accordance with the Council's agreed procedures.

**7.4 SLT OFFICERS (INCLUDING THE MONITORING OFFICER) – SEVERANCE PROCESS:** Any process for the consideration and determination of severance arrangements for these posts is determined by the HR & OD Director in consultation with whoever he/she considers relevant.

**7.5 STATUTORY DESIGNATIONS:** Certain posts carry statutory responsibilities and authority. Statutory designations and the posts agreed by the Council to cover these statutory requirements are set out below. The posts of Head of Paid Service, Chief Finance Officer (also known as Section 151 Officer) and Monitoring Officer have a range of key constitutional responsibilities as set out in relevant legislation.

<b>Designation</b>	<b>Post</b>
Head of Paid Service	Chief Executive
Monitoring Officer	Strategic Manager – Governance & Democratic Services
Chief Finance Officer (Section 151 Officer)	Director of Finance  In the absence of a contracted employee to the above role, the Interim Director of Finance shall fulfil the statutory role.
Director of Children’s Services	Director of Childrens Services / Lead Commissioner Children and Learning  In the absence of a contracted employee to the above role, the Interim Director of Children’s Services shall fulfil the statutory role.
Director of Adult Social Services	Director of Adult Services & Lead Commissioner Adults and Health
Director of Public Health	Public Health Director
Scrutiny Officer	Service Manager – Governance (Scrutiny)

**7.6 DUTY TO PROVIDE SUFFICIENT RESOURCES TO THE MONITORING OFFICER AND THE CHIEF FINANCE OFFICER / SECTION 151 OFFICER:** The Council is required to provide the Monitoring Officer and the Chief Finance Officer / Section 151 Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

**7.7 OFFICER EMPLOYMENT – MANDATORY STANDING ORDERS**

Note: The paragraphs that follow set out the mandatory Standing Orders that apply in this particular area and must be included in the Constitution. The rest of Section 7 – Officer Requirements – reflects these Standing Orders.

## **OFFICERS – APPOINTMENTS AND DISMISSALS**

7.7.1 Subject to paragraphs 7.7.2 and 7.7.9, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the Officer designated under section 4(1) of the 1989 Act (designation and reports of Head of Paid Service) as the Head of Paid Service or by an Officer nominated by him/her.

7.7.2 Paragraph 7.7.1 shall not apply to the appointment or dismissal of, or disciplinary action against –

- (a) The Officer designated as the Head of Paid Service;
- (b) A statutory Chief Officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
- (c) A non-statutory Chief Officer within the meaning of section 2(7) of the 1989 Act;
- (d) A Deputy Chief Officer within the meaning of section 2(8) of the 1989 Act; or
- (e) A person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

7.7.3 Where a Committee, Sub-Committee or Officer is discharging, on behalf of the authority, the function of the appointment or dismissal of an Officer designated as the Head of Paid Service, the authority must approve that appointment before an offer of appointment is made to him/her or, as the case may be, must approve that dismissal before notice of dismissal is given to him/her.

7.7.4 Where a Committee or Sub-Committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any Officer referred to in sub-paragraphs (a) to (d) of 7.8.3, at least one member of the executive must be a member of that Committee or Sub-Committee.

7.7.5 In paragraphs 7.7.5 to 7.7.6, “appointor” means, in relation to the appointment of a person as an Officer of the authority, or, where a Committee, Sub-Committee or Officer is discharging the function of appointment on behalf of the authority, that Committee, Sub-Committee or Officer, as the case may be.

7.7.6 An offer of an appointment as an Officer referred to in sub-paragraphs (a) to (d) of 7.7.2 must not be made by the appointor until –

- (a) The appointor has notified the Proper Officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
- (b) The Proper Officer has notified every member of the executive of the authority of –

- (i) The name of the person to whom the appointor wishes to make the offer;
  - (ii) Any other particulars relevant to the appointment which the appointor has notified to the Proper Officer; and
  - (iii) The period within which any objection to the making of the offer is to be made by the executive Leader on behalf of the executive to the Proper Officer; and
- (c) Either the –
- (i) Executive Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he/she nor any other member of the executive has any objection to the making of the offer;
  - (ii) Proper Officer has notified the appointor that no objection was received by him/her within that period from the executive Leader; or
  - (iii) Appointor is satisfied that any objection received from the executive Leader within that period is not material or is not well-founded.

7.7.7 In paragraphs 7.7.7 to 7.7.8, “dismissor” means, in relation to the dismissal of an Officer of the authority, the authority or, where a Committee, Sub-Committee or another Officer is discharging the function of dismissal on behalf of the authority, that Committee, Sub-Committee or other Officer, as the case may be.

7.7.8 Notice of the dismissal of an Officer referred to in sub-paragraphs (a) to (d) of paragraph 7.8.3 must not be given by the dismissor until –

- (a) The dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
- (b) The Proper Officer has notified every member of the executive of the authority of –
  - (i) The name of the person who the dismissor wishes to dismiss;
  - (ii) Any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer; and
  - (iii) The period within which any objection to the dismissal is to be made by the executive Leader on behalf of the executive to the Proper Officer; and
- (c) Either the -
  - (i) Executive Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he/she nor any other member of the executive has any objection to the dismissal;
  - (ii) Proper Officer has notified the dismissor that no objection was received by him/her within that period from the executive Leader; or

- (iii) Dismissor is satisfied that any objection received from the executive Leader within that period is not material or is not well-founded.

7.7.9 Nothing in paragraph 7.7.1 shall prevent a person from serving as a member of any Committee or Sub-Committee established by the authority to consider an appeal by:

- (a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or
- (b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

## **OFFICERS – DISCIPLINARY ACTION**

### **HEAD OF THE PAID SERVICE, CHIEF FINANCE OFFICER, MONITORING OFFICER – DISCIPLINARY ACTION**

7.7.10 Definitions:

- (a) “the 2011 Act” means the Localism Act 2011;
- (b) “Chief Finance Officer”, “disciplinary action”, “Head of the Authority’s Paid Service” and “Monitoring Officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Order) (England) Regulations 2001;
- (c) “Independent Person (IP)” means a person appointed under section 28(7) of the 2011 Act;
- (d) “local government elector” means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts;
- (e) “the Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
- (f) “relevant meeting” means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) “relevant officer” means the Chief Finance Officer, Head of the Paid Service or Monitoring Officer, as the case may be.

7.7.11 A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

7.7.12 The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

7.7.13 In paragraph 7.7.12 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than 2 such persons, such independent persons as have been appointed by another or such authorities as the authority considers appropriate.

7.7.14 Subject to paragraph 7.7.15, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 7.7.12 in accordance with the following priority order:

- (a) a relevant independent person who has been appointed by the authority and who is a local government elector;
- (b) any other relevant independent person who has been appointed to the authority;
- (c) a relevant independent person who has been appointed by another authority or authorities.

7.7.15 An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 7.7.12 but may do so.

7.7.16 The authority must appoint any Panel at least 20 working days before the relevant meeting.

7.7.17 Before the taking of a vote at the relevant meeting on whether to approve such a dismissal, the authority must take into account, in particular:

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal;
- (c) any representations from the relevant officer.

7.7.18 Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.

# SECTION 8 – DECISION MAKING

**8.1 PRINCIPLES OF DECISION-MAKING:** All decisions will comply with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) After consultation and in the light of professional advice from officers;
- (c) Lawfulness, including respect for human rights (see below for further details);
- (d) Efficiency of decision-making;
- (e) A presumption in favour of openness;
- (f) Explanation of the options considered and recording of the reasons for the decision including an evaluation of risk; and
- (g) Clarity of aims and desired outcomes.

## 8.2 TYPES OF DECISION:

8.2.1 Decisions taken under the authority of Full Council at meetings of the Council, Committees of the Council as detailed in Part 1, Section 6B or under the Council and Cabinet Scheme of Delegation to Officers as detailed in this section.

8.2.2 'Executive' decisions under the authority of the Leader at member level as detailed in section 5 and the Council and Cabinet Scheme of Delegation to Officers as detailed in this section. There are two categories of executive decisions – Key Decisions and Non-Key Decisions and different rules apply to each.

Key Decisions - defined in legislation as:

- (a) Resulting 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 / or
- (b) Significant in terms of their effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

\*\*There is no definition in the legislation of the word 'significant' in (a) above. Therefore the Council has decided that the financial threshold at or above which a financial decision is significant (and a Key Decision) will be a total value of £500,000 for capital / revenue expenditure or savings. Money delegated to schools as part of the Scheme of Financial Management of Schools exercise is exempt from these thresholds once it is delegated to the school.

'Key Decisions' can be taken by the Leader, the Cabinet collectively, jointly by two Cabinet Members, individual Cabinet Members, Senior Leadership Team Officers and the Somerset Waste Board.

In the event of any doubt, the Monitoring Officer will determine whether a proposed decision is a Key Decision under the definitions set out above.

Non-Key Decisions: These are all 'executive' decisions which fall beneath the 'Key Decision' financial or geographical thresholds. 'Non-Key Decisions' can be taken by the Leader, the Cabinet collectively, jointly by two Cabinet Members, individual Cabinet Members, the Somerset Waste Board and Officers.

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



## 8.4 DECISIONS ON THE BUDGET AND POLICY FRAMEWORK

*Note. The paragraphs that follow set out the mandatory Standing Orders that apply in this particular area and must be included in the Constitution. The rest of Section 8 complies with these requirements.*

**8.4.1 THE FRAMEWORK FOR EXECUTIVE DECISIONS:** The Council agrees the Policy Framework and Budget. The Leader implements the Policy Framework and Budget.

**8.4.2 PROCESS FOR DEVELOPING THE FRAMEWORK:** The process for developing the Policy Framework and Budget is:

- (a) The Cabinet recommend the adoption of the relevant Policy or Budget to Full Council. Council either:
  - (i) Adopts the Cabinet's proposals without amendment and with immediate effect,
  - (ii) Follows the process set out in (b) to (h) below, where it has objections to the proposals.
- (b) Where Council is unable to adopt the Policy or Budget in full it informs the Cabinet of the objections and requires the Cabinet to reconsider the Policy or Budget.
- (c) Under (b) above the Council must give the Cabinet at least 5 working days to:
  - (i) Submit to the Council a revised draft Policy or Budget with reasons for amendments; or
  - (ii) Inform the Council of any disagreement with its objections and the reasons for any such disagreement.
- (d) The Council must consider the Cabinet's response to its objections, and decide whether to amend the Policy or Budget or adopt it unchanged.

Note: The Monitoring Officer will, if necessary, call a Council meeting within 21 working days of the expiry of the period referred to in (c) above, to enable the considerations in (d) to take place.

- (e) In approving the Policy Framework and Budget, the Council agrees the extent to which monies can be transferred between different budget headings (virement) within the Budget and the degree of in-year changes to the Policy Framework which can be agreed by the Leader / Cabinet, in accordance with paragraphs 8.4.5 to 8.4.12 of these Rules (decisions outside of the Budget or Policy Framework, urgent decisions outside of the Budget or Policy Framework, and virement).

## **VOTING ON THE BUDGET**

8.4.3 Immediately after a vote is taken on the budget at a budget decision meeting of the Council there will be recorded in the Minutes of the proceedings the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

8.4.4 Budget decision meeting as referred to in 8.4.3 above means a meeting of the Council at which it—

- (a) makes a calculation (whether originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ of the Local Government Finance Act 1992(4); or
- (b) issues a precept under Chapter 4 of Part 1 of that Act, and includes a meeting where making the calculation or issuing the precept as the case may be was included as an item of business on the agenda for that meeting;

8.4.5 References to a vote in 8.4.3 above are references to a vote on any decision related to the making of the calculation or the issuing of the precept as the case may be.

## **DECISIONS OUTSIDE OF THE POLICY FRAMEWORK OR BUDGET**

8.4.6 Subject to the provisions of paragraph 8.4.10 (in relation to virement), only the Council can take decisions outside of the Policy Framework or Budget.

8.4.7 If the Monitoring Officer and / or the Chief Finance Officer consider that a proposed decision is outside of the Policy Framework or Budget, then the decision can only be made by Full Council, unless the decision is a matter of urgency, in which case the provisions in paragraph 8.4.8 (urgent decisions outside the Budget and Policy Framework) apply.

8.4.8 An urgent decision can only be taken:

- (a) If it is not practical to convene a meeting of the Full Council; and
- (b) If the Chair of the relevant Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a meeting of Full Council must be recorded on the record of the decision.

8.4.9 Urgent decisions taken under 8.4.8 above are reported to the next Full Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

8.4.10 **VIREMENT:** The rules on the transfer of approvals (virement) between budget headings are set out in the Council's Financial Regulations – see Part 2 of the Constitution.

#### **REVIEW OF DECISIONS THAT MAY FALL OUTSIDE OF THE POLICY FRAMEWORK OR BUDGET**

8.4.11 Where a Scrutiny Committee considers that a Key Decision made or proposed is or would be outside of the Policy Framework or Budget, then it can seek advice from the Monitoring Officer and/or the Chief Finance Officer.

8.4.12 If the Monitoring Officer and/or the Chief Finance Officer agree with the Scrutiny Committee's opinion they will present a report to the Leader with a copy sent to every Member of the Council. The Leader must decide what action to take and prepare a report to Full Council.

8.4.13 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be outside of the Policy Framework or Budget, the Scrutiny Committee can refer the matter to Full Council for decision. Full Council must meet within 21 days of the request by the Scrutiny Committee. Full Council can either:

- (a) Confirm that the decision falls within the Policy Framework or Budget;  
or
- (b) Amend the Council's Financial Regulations or the relevant policy and agree to the decision with immediate effect; or
- (c) Require the Leader to reconsider the matter in accordance with the advice of either the Monitoring Officer / Chief Finance Officer.

#### **8.4.14 COUNCIL DELEGATIONS TO OFFICERS**

See section 8.5 – Council and Cabinet Scheme of Delegation to Officers

## 8.5 COUNCIL AND CABINET SCHEME OF DELEGATION TO OFFICERS

*'Local Choice' functions (as defined in Part 1, Section 1) are indicated in italics.*

### 8.5.1 To Senior Leadership Team (SLT) Officers

#### **General:**

Authority to manage the services for which they are responsible for commissioning or delivering and to act to safeguard, protect and promote the interests of the Council.

Authority for all relevant decisions not delegated to members (unless delegated to an Officer by a Member or by a Committee). Where a specific delegation is available then it should be used as opposed to any general delegation

Where the decision making responsibility is shared with a Cabinet Member, the Officer cannot make a decision without the agreement of the relevant Cabinet Member.

Authority to delegate decision making responsibilities to other Officers of the Council. Current delegations are set out in the Officer Scheme of Delegation.

Specific delegations to Operations Directors can be exercised by any Commissioner within the Senior Leadership Team where the named Officer is absent or unable to act.

*The making of agreements with other local authorities for the placing of staff at the disposal of those authorities (this delegated authority includes the County Solicitor).*

Note: the authority to act and take decisions under this Scheme includes the following interim appointments in the absence of relevant contracted employees:

- Interim Director of Finance

#### **Property**

Authority to enter, inspect and survey land, buildings or premises and issue as necessary any evidence or authority as may be required in order for them to execute their duties in accordance with the Council's statutory powers.

Where either the capital payment does not exceed £500,000 or the annual rental does not exceed £100,000, authority:-

- (a) Subject to the consent of the Section 151 Officer and the Monitoring

Officer, and in consultation with the relevant Cabinet Member, to authorise and approve the acquisition of land and the taking of leases, licences, dedications and easements of or over any land (including buildings) whether by way of valuable consideration or exchange;

- (b) To declare land surplus to Directors' requirements.
- (c) To arrange for sessional lettings of premises for periods of less than 24 hours.

**Partnerships:** Authority

- (a) To approve operational frameworks for delivery level partnership / joint working arrangements with other public, private, voluntary and community sector organisations
- (b) When representing the Council or the Leader on a partnership or outside body to take decisions on behalf of the Council / Leader subject to advance notice of the issue having been given to the Council's representative.

**Financial:** The authority and responsibilities of Senior Leadership Team Officers in respect of financial matters are set out in the Council's Financial Regulations – see Part 2 of the Constitution.

**Contracts:** The authority and responsibilities of Senior Leadership Team Officers in respect of contractual matters are set out in the Council's Contract Standing Orders set out in Part 2 of the Constitution.

**Staff Resources:** Authority to act in relation to the appointment, dismissal and all other matters relating to the employment of Officers. For further details about the exercise of these delegated powers see Part 1, Section 7.

**Section 106 agreements, Bid submissions & Consultations:**

Authority to :-

- (a) Approve responses to consultation papers
- (b) Agree operational requirements for S106 Agreements or other similar agreements with no financial limit, providing suitable on-going revenue support and exit strategies are in place.
- (c) Agree the completion of Section 106 Agreements on behalf of the Council or other similar agreements with no financial limit, providing suitable on-going revenue support and exit strategies are in place.
- (d) Submit bids on behalf of the Council. Any Council bids for funding from external bodies are only to be made where suitable on-going revenue support and time periods/exit strategies are in place.
- (e) Carry out any relevant consultation on behalf of the Council
- (f) Make appropriate planning and building regulations applications
- (g) Approve promotional and marketing campaigns.

### **8.5.2 To the Chief Executive - Emergency Powers**

In an emergency, the Chief Executive (and any Officer(s) authorised by the Chief Executive) is authorised to take any and / all action(s) he/she considers appropriate to protect and/or further the best interests of the Council, the County of Somerset and / or the public, subject to:

- (a) Consultation with the Leader of Council or in his/her absence the Deputy Leader and any appropriate Member of the Cabinet.
- (b) A report of the action taken and the reasons behind it being presented to the next meeting of the Cabinet, the Council or the relevant Committee.

This includes exercising the Council's powers under Section 138 of the Local Government Act 1972 to incur expenditure (regardless of whether the value would equate to a key decision) and to suspend aspects of business as usual to enable the Council to comply with its duties under the Civil Contingencies Act.

### **8.5.3 To the County Solicitor and other Officers - Legal and Procedural**

The County Solicitor (and other such person authorised by the County Solicitor) is authorised:

- (a) To serve statutory notices to ascertain the legal interest in land of any person;
- (b) To institute, defend or settle any legal proceedings or any dispute or matter where there is the potential for legal proceedings to be instituted by any party (either in the name of the Council or an individual Member and / or Officer of the Council) and to lodge an appeal in any matter. For the avoidance of doubt this authority shall extend to the taking of all procedural steps, including the service of notices, statutory or otherwise, counter notices, and Notices to Quit.
- (c) Where any document is required for any legal procedure or proceedings on behalf of the Council, it will be signed by the County Solicitor or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given the necessary authority to some other person.
- (d) To attest the affixing of the Common Seal of the Council. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to documents as required by the Contract Standing Orders or which in the opinion of the County Solicitor (or some other person authorised by him/her) otherwise require sealing. The affixing of the Common Seal must be attested by the County Solicitor or some other person authorised by him/her.

- (e) To authorise Officers of the Council to prosecute or defend or appear in any legal proceedings by virtue of the provisions of Section 223 of the Local Government Act 1972;

Without prejudice to the powers of the County Solicitor to institute proceedings, Devon County Council have full delegated powers on behalf of Somerset County Council to institute proceedings either in the name of the Council or in the name of a designated Officer under the relevant statutory powers, duties and provisions to enforce Trading Standards, Food and Animal Health legislation. Devon County Council has been given the power to authorise Officers (subject to approval by the Lead Commissioner for Economic and Community Infrastructure approving any appointments) to enforce Trading Standards, Food and Animal Health legislation, to issue statutory notices in relation to those areas and to authorise other local authorities to investigate and institute proceedings in respect of alleged offences under any legislation which are alleged to have been committed within Somerset. Devon County Council has been given delegated powers to appoint a Chief Inspector of Weights and Measures under s72 of the Weights and Measures Act 1985, a Public Analyst under S27 Food Safety Act 1990, and an Agricultural Analyst and under S67(3)(b) of the Agriculture Act 1970, and deputies if required, subject to the approval of the Lead Commissioner for Economic and Community Infrastructure.

Senior Leadership Team Officers are authorised to appoint any individual Officer of the Council as the “Proper Officer” for the purpose of any legislation.

#### **8.5.4 To the Lead Director for Economic and Community Infrastructure – Property**

Subject to the consent of the Section 151 Officer and the Monitoring Officer:

- (a) Where either the capital payment does not exceed £500,000 or the annual rental does not exceed £100,000, authority:-
- (i) to declare land and property surplus to the Council’s requirements;
  - (ii) to dispose of land and grant, or vary, leases, licenses, dedications of or over any land. In the case of the grant of tenancies of small-holdings, these delegated powers shall be exercised in consultation with the relevant Cabinet member.
- (b) Authority to sell land or property at an undervalue not exceeding £100,000 (expressed as a capitalised figure) or 20% of the unrestricted value, whichever is the lower.
- (c) Authority to issue and sign documents in relation to the Right to Buy provisions of the Housing Act 1985
- (d) The function of Authorising Officer under the Regulation of Investigatory Powers Act 2000 and to designate such other

Authorising Officers (as defined in the Act) as he/she considers to be necessary and competent for the purposes of the Act.

**8.5.5 To the Section 151 / Chief Finance Officer:**

Authority to accept resources from the Government and other third parties additional to that set out in the Council's approved Medium Term Financial Plan where there is no consequential impact to either capital resources or the Revenue Budget.

**8.5.6 To the Economic & Communities Infrastructure Commissioning Director**

Planning Control

The functions of the Council relating to town and country planning and development control with the exception of:

- (a) Any such functions reserved to Full Council or the Cabinet;
- (b) Determining an application for planning permission where
  - (i) a significant planning objection has been made, or
  - (ii) the Officer recommendation is to refuse planning permission, or
  - (iii) the local Member refers the application to committee for determination under the pre-decision consultation process.

Where the Economic & Communities Infrastructure Commissioning Director considers an objection not to be significant, he/she must obtain the agreement of the local Member(s), and the Regulation Committee Chair & Vice-Chair and Regulation Committee lead member (Opposition Group) before the decision can be taken under delegated powers. Where such agreement is not reached the Regulation Committee shall determine the application.

Public Rights of Way

The functions of the Council relating to public rights of way, including the maintenance of the rights of way network and the review of the definitive map and statement, under the Highways Act 1980, the Wildlife and Countryside Act 1981 and any other relevant enactment, including, in consultation with the County Solicitor, the determination of applications for modification of the definitive map, with the exception of the following which shall be determined by the Regulation Committee:

- (a) Those applications which in the view of the Economic & Communities Infrastructure Commissioning Director, in consultation with the Chair of the Regulation Committee, are contentious or controversial; and
- (b) Requests from applicants for Modification applications to be taken out of turn from the adopted Statement of Priorities.



### Common Land, Town or Village Greens

The functions of the Council relating to common land and town or village greens under the Commons Act 2006 and any other relevant enactment, including, in consultation with the County Solicitor, the determination of applications for the registration of the same or for amendment of the Commons Register, with the exception of those applications which in the view of the Economic & Communities Infrastructure Commissioning Director, in consultation with the Chair of the Regulation Committee, are contentious or controversial, which shall then be determined by the Regulation Committee.

### Traffic regulation

(a) To determine applications for traffic regulation orders determined in accordance with criteria of the Department of Transport and County Council policy.

(b) To determine applications for the stopping up of a highway and/or its diversion (except in relation to rights of way).

### 'Local choice' functions allocated by the Council

(a) *The investigation of any complaint as to the existence of a statutory nuisance.*

(b) *The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land*

(c) *The obtaining of particulars or persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976*

(d) *The making of any agreements for the execution of highways works.*

### **8.5.7 To the Director of Childrens Services** (*'local choice' functions allocated by Council to the Leader*)

(a) *The making of arrangements pursuant to subsection (1) of section 67 of, and Schedule 18 to, the 1998 Act (appeals against exclusion of pupils).*

(b) *The making of arrangements pursuant to section 94(1) and (4) of, and Schedule 24 to, the 1998 Act (admission appeals).*

(c) *The making of arrangements pursuant to section 95(2) of, and Schedule 25 to, the 1998 Act (children to whom section 87 applies: appeals by governing bodies).*

### **8.5.8 To the Director of Finance**

Powers: Arrangements for internal audit.

### 8.5.9 To the Monitoring Officer

Authority to make appointments to:

- (a) Committees and Sub-Committees,
- (b) Internal, partnership and outside bodies.

This authority is subject to the Group Leaders agreeing to the appointments. In the event that a Group Leader does not agree with a proposed appointment then the decision will be referred to a County Council meeting.

### 8.5.9 Conditions on the exercise of any delegated power

Before exercising a delegated power the Officer must consider whether the decision to be made is of such a nature that it ought to be referred to members for decision.

Any action taken under delegated powers shall be in accordance with:

- (a) The Council's Policies and Budget;
- (b) All appropriate legislation, statutory guidance, good practice and this Constitution (including the Contract Standing Orders and the Council's Financial Regulations/Financial Procedures).

The exercise of delegated powers is subject to:

- (a) Consultation, where appropriate, with the Cabinet Member, Junior Cabinet Member, or relevant Committee Chair (or in his/her absence the Vice-Chair).
- (b) Any local Member whose area is significantly affected being consulted before the decision is taken and informed of any subsequent action / outcome.(\*)
- (c) Consultation with relevant Senior Leadership Team Officer(s) (including the Section 151 Officer) and / or the Monitoring Officer and County Solicitor and due regard to any advice given.
- (d) Consulting or informing the relevant Opposition Spokespersons and Scrutiny Chair, as appropriate to the subject matter and depending on the type of decision.

\* where the decision relates to more than one electoral division then all relevant Members should be informed ie. if this is countywide then all members should be informed

#### Notes

- (a) For decisions proposed to be taken under the authority of the Council, where the local Member(s) consulted under (b) above so requests, the matter will be referred to the relevant Committee for decision.

- (b) Where a Non-Key Decision is below £15,000 in value then only provision (c) above needs to be followed, together with (b) where appropriate.
- (c) The delegated authority to Officers excludes the determination of policy, amendments to policy and exceptions to policy.
- (d) All Key Decisions taken by Officers are subject to call-in action by scrutiny.

## 8.6 ACCESS TO INFORMATION PROCEDURE RULES GENERAL

8.6.1 Part 1 of these rules set out the rights of the public and Members to access information under the decision making process.

8.6.2 Part 2 details Members' wider access rights to access information held by the Council. These rights are complex and are set out in legislation, regulations and the common law. Members' rights go beyond those of the public. **However, Members do not have an automatic right of access to all information held by the Council. A Member's right to access information held by the Council is dependent on their legal and constitutional rights as determined, where necessary, by the Monitoring Officer as an 'independent' arbiter.**

8.6.3 "Need to know": The common law right of Members to have access to Council information on a "need to know" basis is a broad provision based on the principle that a member has a prima facie right to have such access so far as is reasonably necessary to enable him/her to perform their duties as a member of the Council. To exercise this right the Member must be able to demonstrate a genuine "need to know" rather than just undertake a general 'fishing expedition'. Members do not have a general right to access all documents held by the Council. In most cases access will be provided as a matter of course but in some circumstances (e.g. a Member wishing to access Council documents which contain personal information about third parties) justification will be required. In some cases, Members may be required to sign a non-disclosure agreement in order to have a greater level of access to exempt information than would be allowed to Members' generally. Even in these circumstances full access may still not be allowed for legal reasons or where the risks of disclosure are considered too great to the Council, an organisation or an individual. Any Member asked to sign a non-disclosure agreement must be advised of the level of access that will be permitted by signing the agreement. If access is disputed the Monitoring Officer will give a final ruling.

8.6.4 A Member may request information and advice from a council service in connection with their role as a member. Such approaches should however normally be directed to the relevant Director or Strategic Manager. Members must not put undue pressure on Officers to release information and documents to which they are not entitled to have access.

8.6.5 A Member must only use Council information provided for his/ her duties as a member of the Council.

8.6.6 The rules set out in Part 1 apply in full or in part to the Council's Cabinet (executive) decision-making arrangements as indicated. The following rules in Part 1 apply as specified to meetings of Full Council and the Council's Committees, 8.6.7-9, 20-22, 27-29, 31-37, 44 and 47-51. The rules comply with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012).

## **PART 1 – ACCESS TO INFORMATION RULES – DECISION MAKING**

### 8.6.7 Definitions:

- (a) '5 clear days' – references to the term 'clear' in this context excludes Saturdays, Sundays, Bank and Public Holidays, the day that the agenda is sent to Members and the day of the meeting.
- (b) '28 clear days' - references to the term 'clear' in this context includes weekends and public holidays.
- (c) 'Executive decisions' – are Key or Non-Key decisions taken under the authority of the Leader and by the Leader or delegated to the Cabinet, a committee of the Cabinet, a Cabinet Member or an Officer.
- (d) 'Information' - means information, including any document, report or background paper other than in draft form.
- (e) 'Publication', or derivatives of - means: publication on the Council's website unless otherwise stated. Hard copies of papers are available for inspection or can be provided free of charge on request. If large volumes are requested a charge may be made.

## **MEMBERS OF COMMITTEES – RECEIPT OF PAPERS**

8.6.8 Committee Members receive a printed copy of agendas and papers for meetings of that body unless they have exercised the option to receive the papers electronically via a link to the website. Either method complies with the legal requirement to give notice by the Council under the Local Government (Electronic Communications) (England) Order 2015. A Member may revoke this request at any time.

8.6.9 **NOTICE OF MEETINGS:** The Council normally gives at least 5 clear days' notice of public meetings via the website, the public notice board at County Hall, Taunton and at the venue for the meeting if held elsewhere. If the meeting is convened at shorter notice than 5 days, then public notice is given at the time the meeting is convened.

## **CABINET FORWARD PLAN OF KEY DECISIONS**

8.6.10 The Cabinet Forward Plan of proposed Key Decisions is published weekly. The Council also publishes the Somerset Waste Board Forward Plan of proposed Key Decisions. Normally at least 28 clear days' notice of key decisions is given in the plans. Meeting notices list the key decisions to be taken.

## **PROCEDURE BEFORE A KEY DECISION CAN BE TAKEN:**

8.6.11 Unless the General Exception Rule (8.6.13) or Special Urgency Rule (8.6.14) is used, a Key Decision can only be taken:

- (a) If published in the relevant Forward Plan;
- (b) At a formally convened meeting;
- (c) By an individual Cabinet Member or Officer, where a notification report has been published at least 5 clear days before the decision is due to be taken or when published if less than 5 clear days can be given.

Key decision details published must include the:

- (a) The key decision title and description
- (b) Name or title of the decision-making body or person
- (c) Date of the decision or the period within which it will be made
- (d) List of documents submitted to the decision maker for consideration
- (e) Details of copies of the documents can be obtained or accessed
- (f) Opportunity for other documents to be submitted to the decision-maker and details of how copies may be obtained.

8.6.12 A Cabinet Member must consider officer advice before committing the Council via a formal decision in any dealings with third parties in relation to the acquisition or disposal of land, property or contractual issues.

## **KEY DECISIONS – GENERAL EXCEPTION AND SPECIAL URGENCY RULES:**

8.6.13 General Exception Rule: If 28 clear days notice of a Key Decision cannot be given, then subject to Rule 8.6.14 (Special Urgency), then a key decision can only be taken if the Monitoring Officer has:

- (a) Informed the Chair of the relevant Scrutiny Committee, or, in their absence, each member of that Committee in writing or by email, of the matter for decision;
- (b) Has given 5 clear days' notice via the public notice board at County Hall, Taunton and on the Council's website.

8.6.14 Special Urgency Procedure Rule: If a Key Decision is required so urgently that Rule 8.6.13 above (General Exception Procedure) cannot be complied with, then the decision can only be taken with the agreement of the Chair of the relevant Scrutiny Committee (or if unavailable, the Chair of Council or in his/her absence the Vice-Chair of Council), in writing or by email that the decision is urgent and cannot be deferred.

8.6.15 If urgency is agreed, the Monitoring Officer will publish a notice at County Hall, Taunton and on the Council's website stating the reasons for urgency and why the 28 day notice and general exception procedures cannot be complied with.

## **CABINET MEMBER AND OFFICER KEY AND CABINET MEMBER NON-KEY DECISIONS – CONSULTATION REQUIREMENTS**

8.6.16 Before a Key Decision can be taken, the following must be consulted:

- (a) The relevant Cabinet Member(s), Junior Cabinet Member (where appropriate) and Senior Leadership Team Officer(s).
- (b) Any local Member whose electoral division is significantly affected. They must also be informed of any subsequent action / outcome.
- (c) The Chief Finance Officer, the Monitoring Officer and the County Solicitor and due regard given to their advice where there are likely to be financial, legal or standards implications.
- (d) The relevant Opposition Spokesperson / Leader
- (e) The Chair (or in their absence the Vice-Chair) of the relevant Scrutiny Committee.

8.6.17 Before a Cabinet Member Non-Key decision is taken, the consultation requirements at (a), (b) and (c) of 8.6.16 above must be met.

In addition, the relevant Opposition Spokesperson / Leader and the Chair (or Vice-Chair in their absence) of the relevant Scrutiny Committee must be informed of the decision.

## **QUARTERLY REPORTS ON SPECIAL URGENCY DECISIONS**

8.6.18 The Leader reports Special Urgency Key Decisions taken in the preceding three months within the quarterly reports of the Cabinet to the Full Council.

## **SCRUTINY – RIGHT TO REQUIRE CABINET TO REPORT TO COUNCIL**

8.6.19 Where a Scrutiny Committee considers that a non key decision should have been taken as a key decision, the Committee can require the Cabinet to submit a report to the County Council at the earliest opportunity. The report must set out the decision, the reasons for it, the name of the decision maker and, following review, the reasons why it was not treated as a key decision.

## **PUBLIC ACCESS TO REPORTS AND OTHER DOCUMENTS:**

### General

8.6.20 Documents for key and Member non-key decisions and for formal meetings are published except those containing confidential or exempt information. Meeting papers are published at least 5 clear days before the meeting or when the meeting is convened if at shorter notice. If a late item is added to an agenda, a revised agenda and any additional report (s) will be published at the same time as being sent to Members.

## **BACKGROUND PAPERS:**

8.6.21 Each decision report includes a list of documents (called background papers) used to prepare the report and which are not already referred to. The list will not include published works or those which disclose exempt or confidential information.

8.6.22 Background papers for all Member decisions, key decisions taken by officers and decisions taken by an Officer under delegated authority from the Cabinet or a Cabinet member are published.

## **DECISION NOTICES:**

8.6.23 As soon as possible after a decision is taken at a Cabinet meeting or by a Cabinet Member, the Monitoring Officer will produce a decision notice to include:

- (a) A record of the decision including the date
- (b) The reasons for the decision
- (c) Details of any alternative options considered and rejected
- (d) A record of conflicts of interests declared by members of the Cabinet and any dispensations agreed by the Chief Executive.
- (e) Details of whether urgent implementation has been agreed, along with reasons.

There are similar requirements for recording executive decisions taken by officers.

## **INSPECTION OF DOCUMENTS FOLLOWING AN EXECUTIVE DECISION**

8.6.25 Decision notices prepared under 8.6.23 above and supporting papers are published for Member / Officer Key Decisions, Member Non-Key Decisions and Officer Non-Key decisions taken under a direct delegation from the Cabinet or a Cabinet Member.

8.6.26 Hard copies of published decision notices and supporting papers are available on request. Where a number of copies are requested a reasonable charge may be made to cover printing and postage costs.

### Access to decision records/reports/minutes/background papers etc after decisions are taken

8.6.27 The Council makes available for inspection via its website the following for a minimum of 6 years from the date of the decision:

- (a) Minutes of Council, Committee or Cabinet meetings
- (b) Records of Cabinet, joint and individual Cabinet Member decisions
- (c) Officers decisions (for Key Decisions / and decisions delegated by Cabinet or an individual Cabinet member only);
- (d) A non-confidential summary of any Minute(s) / decision record (s) containing exempt or confidential information;
- (e) Agendas; and
- (f) Any relevant reports.



8.6.28 Background papers supporting decisions made at formal meetings are also made available for inspection for a minimum of 4 years from the date of the decision. In addition, in the case of a decision taken by the Cabinet, a Cabinet Member or an Officer under delegated authority from the Cabinet or a Cabinet Member, the background papers are published and available for a minimum of 4 years from the date of the decision.

**RIGHTS OF THE PUBLIC TO ATTEND MEETINGS:**

8.6.29 Members of the public may attend all formal Members’ meetings except where confidential or exempt information is to be considered.

8.6.30 There are separate rules for the consideration of confidential and exempt Cabinet and Somerset Waste Board business from those that apply to Full Council and Committees. Where a Cabinet or Somerset Waste Board meeting is due to consider confidential or exempt information, advance notice will be published in the relevant Forward Plan together with details of how representations can be made for the business to be considered in public session. A further notice will then be published 5 days before the decision meeting setting out details of any representations received and the Council’s response.

8.6.31 If advance notice of confidential or exempt business required under 8.6.30 cannot be given then the approval of the Chair of the relevant Scrutiny Committee (or where unavailable the Chair or Vice-Chair of the Council) must be given and a notice published as soon as the item is known about.

8.6.32 ‘Confidential’ information is information given to the Council by a Government Department on terms forbidding its public disclosure or information which is prevented from being publicly disclosed by Court Order. Where confidential information is to be considered it is a requirement to exclude the press and public from accessing papers and discussions on such matters and members access is limited by statute. Accordingly, the press and public will be excluded from the meeting by resolution where confidential information is to be considered.

8.6.33 Exempt information is as follows,

<b>Category</b>	<b>Qualifications</b>
<ol style="list-style-type: none"> <li>1. Information relating to any individual.</li> <li>2. Information which is likely to reveal the identity of an individual</li> <li>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</li> </ol>	<ol style="list-style-type: none"> <li>1. Information is not exempt information if it is required to be registered under the Companies Act, Charities Act etc.</li> </ol>

<p>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.</p> <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>6. Information which reveals that the Authority proposes –</p> <p>(a) to give under any enactment notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make order or direction under any enactment.</p> <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>2. Information is not exempt information if it relates to proposed development for which the Council may grant itself planning permission.</p> <p>3. Subject to paragraphs 1 and 2 above, information which falls within paragraphs 1 to 7 opposite is exempt information if and so long as the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>
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8.6.34 The press and public may be excluded from a meeting where exempt information is to be considered and any supporting information withheld from publication or the meeting may decide to consider the item of business and any reports with the public present and publish the report after the meeting.

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

**RIGHTS OF THE PUBLIC TO SPEAK AT FORMAL MEETINGS OF THE CABINET AND COMMITTEES OF THE COUNCIL – PUBLIC QUESTION TIME (PQT):**

Note: Different requirements apply to Public Question Time at Full Council meetings and these are set out in Section 4.

8.6.36 The relevant Chair has discretion to vary any of the following rules:

- (a) A member of the public may ask a question or make a statement about any item on an agenda for the meeting.

- (b) In addition, a petition may be presented on any matter within the overall remit of the body.
- (c) The agenda will provide for questions/statements/petitions to be taken early in the meeting although the Chair has discretion to take them when the relevant item is reached on an agenda.
- 1) (d) For Committee meetings, a person wishing to speak under public question time should submit their statement / questions in writing to the relevant Democratic Services Manager / meeting administrator (via the following email address: [democraticservices@somerset.gov.uk](mailto:democraticservices@somerset.gov.uk)) by 5pm three clear working days before the meeting i.e. 5pm on the Thursday prior to a meeting that is being held on a Wednesday.. Any questions, statements or petitions received after the deadline will only be considered with the discretion of the Chair of the relevant meeting. The questioner will need to set out reasons for their late submission to be considered at the meeting. If the Chair rejects the late question or statement then a written reply will be provided by the council within 20 working days of the meeting.

Notwithstanding the above, where a question relates to a matter which is included on the agenda for a meeting at which the question is to be put but that agenda or any Officers Report has not been made available before the normal deadline for submission of questions by 5pm three clear working days before the meeting then provided written notice of a question is received within 24 hours of that Agenda or Report having been so published then the question shall be allowed.

- (e) The Chair will allow those who have given prior notice to introduce their question / statement / petition - 3 minutes maximum. If a person is unable to attend a meeting in person, then they will be allowed to arrange for someone to ask the question on their behalf. If no person is able to put the question to the meeting then either the relevant Chair of the meeting or the Democratic Services Manager will present the statement / questions to the meeting.
- (f) If a person submits more than three questions (including any sub-division or component questions ie. Question 1a, 1b and 1c would mean three questions the same as Question 1, 2 or 3) then only the first three questions shall be accepted for a meeting (subject to those questions not duplicating or being similar to other questions received from other persons for the meeting). Where there is duplication or the question or statement is similar then these will be rejected. The Monitoring Officer or relevant Democratic Services Manager shall adjudicate on the application of this in consultation with the Chair of the relevant meeting.
- (g) A response will be given once the question/statement/petition has been introduced or when the relevant agenda item is considered. After the response has been given there will be no member debate.
- (h) Normally a maximum of 20 minutes is allowed for public question time.
- (i) Where there are a large number of questioners on the same subject matter, the Chair may ask those concerned to nominate one or more of their number to ask question(s).

- (j) In exceptional circumstances the Chair may adjourn the meeting temporarily to allow views to be expressed more freely.

## **RECORDING AND REPORTING AT PUBLIC MEETINGS:**

8.6.37 Public and press are welcome to record / film / transmit the proceedings of formal meetings in accordance with the Somerset County Council Recording Protocol set out in Part 2 of the Constitution.

8.6.38 The Council makes audio recordings of its main decision making meetings – Full Council, Cabinet and Regulation Committee – available to access on the website immediately following meetings and until the minutes of the meeting have been signed as a correct record at the next meeting. Audio recordings are also made separately available to members via private access arrangements for the same period. Other formal meetings may be recorded on an ad-hoc basis depending on the circumstances and those attending will be informed where this is the case in advance of the start of the meeting.

## **MEMBERS ACCESS RIGHTS TO REPORTS FOR FORMAL MEETINGS**

### General

8.6.39 All Members have a statutory right under the Local Government Act 1972 to inspect any Council document for business to be transacted at a Council, Cabinet, or committee meeting. This right extends to any relevant background papers but normally excludes confidential and exempt information.

### Cabinet business

8.6.40 Subject to 8.6.41 below, all Members have a statutory right to inspect any Cabinet document (including background papers) in support of business to be transacted at a meeting and this shall be available five clear days before the meeting or at the time when an item is added to an agenda or a meeting convened at shorter notice. These legal rights are restricted in relation to confidential and exempt information.

8.6.41 The right to inspect in 8.6.39 above extends to any document in support of and a decision made by:

- (a) a Cabinet Member under delegated powers, or
- (b) an Officer as a key decision or under a delegation from the Cabinet or a Cabinet Member.

### Rights of scrutiny committee to access Cabinet documents

8.6.42 Rights to copies / inspect documents: Subject to Rules 8.6.43 to 8.6.44, members of the Scrutiny Committees are entitled to inspect any Cabinet document and which contains material relating to:-

- (a) Business to be transacted at a Cabinet meeting; or
- (b) A Cabinet Member decision

- (c) Any Key Decision taken by an Officer and Officer Non-Key decisions taken under delegated authority from the Cabinet or a Cabinet member.

8.6.43 A document requested under 8.6.42 will be made available as soon as is practicable after the request and within 10 clear days.

8.6.44 Scrutiny Committee Members are **not** entitled to:

- (a) Draft documents; or
- (b) Any part of a document containing exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise.

8.6.45 The Cabinet can refuse access to information requested by a scrutiny member but must provide a written statement giving the reasons for refusal.

8.6.46 In the event of any conflict between this Protocol, any other policy, protocol, or guidance of the Council and any law (either common law or statutory), the law shall take precedence.

### **MEMBERS ACCESS TO CONFIDENTIAL / EXEMPT REPORTS FOR FORMAL MEETINGS**

8.6.47 The right of access for non-Cabinet members to confidential or exempt information within the ownership of the Cabinet is limited to certain categories of information – see 8.6.48 below. Access is limited to viewing the document after the meeting or after a decision is made and must be available on request within 24 hours of the decision.

8.6.48 The legal right of access only applies to documents that fall under Part 1 of Schedule 12A of the Local Government Act 1972 in the following categories:

- (a) Paragraph 3, ie, information relating to the financial and business affairs of any particular person [including the authority] except for information relating to terms proposed or to be proposed in negotiations for a contract); and
- (b) Paragraph 6, ie, information which reveals 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 directions under any enactment.

8.6.49 The Council goes beyond the legal requirements set out above in providing access to confidential and exempt information held by or on behalf of the Cabinet. Cabinet Members taking a Cabinet or a non-Cabinet decision will receive papers containing confidential or exempt information as necessary in order to be able to take the decision. There is then a presumption that, except in the case of reports which contain confidential personal information about employees or other persons, or where the report

contains highly confidential commercially sensitive information, reports containing confidential or exempt information will be made available to other individual non-Cabinet members attending the meeting or on request. As stated above this in addition to any other specific rights that members may have as a result of having a specific role on the Council, eg, as a Scrutiny Member. This presumption of openness also applies to Committee meetings.

8.6.50 There may be occasions where the Monitoring Officer advises that a report contains information which is so sensitive (eg, contains highly sensitive commercial information) that it is necessary to limit access to the report following a request by members not involved in the decision making process. This may be achieved in various ways including giving out named copies at the start of a debate and collecting them in at the end of the debate or requiring Members with a specific interest or role to sign a non-disclosure agreement.

8.6.51 Confidential or exempt information will normally be provided to Members as a confidential annex to a public report. A public summary of the confidential report will be published. The same approach is taken to confidential decision records or the minutes of the meeting.

8.6.52 A Member's entitlement (under common law or under statute) to see a report containing confidential or exempt information, extends to relevant background papers. However, the Member must maintain the confidentiality of the background papers.

8.6.53 A Member who is refused access to information and is dissatisfied with this response, may take the matter up with the appropriate Senior Leadership Team Officer (or Chief Executive for corporate or cross-cutting issues) who, if necessary, will consult with the Leader of the relevant group, the relevant Cabinet Member or Opposition Group Spokesperson and the Monitoring Officer before responding.

## **PART 2 – Members' Access to Information and Confidentiality Issues – General.**

8.6.54 There are two basic requirements for information to be considered confidential.

- (a) It must not already be published and widely available publicly.
- (b) The information must fall under the protection of the confidentiality laws, eg personal data, commercially sensitive data, military secrets and the like. In many areas of law such as Access to Information, Data Protection and Freedom of Information the categories protecting information are clear. The general law is far less clear and there has to be a legitimate expectation of confidentiality. Without justification, writing "confidential" at the top of a document will not provide legal protection, nor is a document "confidential" merely because its contents may be embarrassing or inconvenient.

8.6.55 Confidentiality usually arises because a person or organisation claims confidentiality for information they have, and wish to withhold from publication. In the public sector anyone wishing to claim protection at law for confidential information is increasingly likely to have to justify that claim.

8.6.56 Confidential information can only be released or passed on with legal justification or with proper authority, eg, with the consent of a person properly authorised to give it. To release confidential information without consent:

- (a) Could lead to legal action (against either the individual personally and/or the Authority).
- (b) Is likely to be a breach of the Council's Standards of Conduct for Officers or the Members' Code of Conduct.

If you are unsure whether information passed to you is confidential or not please check its status with the sender before you pass it to anyone else.

8.6.57 The Members' Code of Conduct includes 'tests' that Members must fulfil if they are considering releasing confidential information, as follows:

- (i) The 'public interest' test. In order for disclosure to be in the "public interest", the information should involve one or more of the following matter(s), or something of comparable seriousness:
  - a) a criminal offence;
  - b) failure to comply with a legal obligation;
  - c) a miscarriage of justice;
  - d) serious health or safety issue
  - e) potential damage to the environment
  - f) deliberate concealment of any of the above matters;
- (ii) The 'good faith' test. For a disclosure to be in "good faith", a Member should not be acting with an ulterior motive, eg to achieve a party political advantage or to settle a score with a political opponent or some other person.
- (iii) The "reasonable requirements of the Authority" test, which requires the Member to comply with the Council's policy or protocols on matters such as whistle blowing, confidential information and any other specific requirements which the Council may reasonably make. The Member must first raise his or her concerns through the appropriate channels set out in relevant policies or protocols

8.6.58 Anyone considering releasing confidential information without consent is strongly advised to obtain and consider professional advice before passing the information on. In the case of members you must consult the Monitoring Officer or the County Solicitor before releasing such information without consent.

8.6.59 A person passing on confidential information with legal justification or permission must make it clear to the recipient of the information that the

information is confidential and must not be disclosed. If the recipient cannot provide appropriate assurance that the confidentiality of the information will be respected, it must not be passed on.