

## CONSTITUTION WORKING GROUP ON 12 JULY 2010

### EXECUTIVE ARRANGEMENTS

- 2 types permitted :-
  - Elected mayor + at least 2 but not more than 9 other councillors appointed by the mayor
  - Leader elected by Full Council + at least 2 but not more than 9 other councillors appointed by the leader (not the council).
- Chairman and vice chairman may not be members of the executive

### Powers of the Executive

- 4 types of function:-
  - Functions which may not be the responsibility of the executive
  - Functions which may be performed by the executive or by the council or a committee (matter for the constitution)
  - Functions which may not be the sole responsibility of the executive
  - All other functions which MUST be performed by the executive

### Functions which may not be the responsibility of the executive

- Development control (broadly most of the functions delegated to DC)
- Licensing functions (including environmental health licensing)
- Functions relating to health and safety at work
- Electoral functions
- Functions relating to the name and status of areas and individuals (e.g. changing the name of the district or a parish)
- Functions relating to community governance under Local Government and Public Involvement in Health Act 2007 (e.g. parish reviews)
- Making byelaws
- Functions relating to smoke free premises
- Power to promote or oppose local or personal bills

- Functions relating to the local government pension scheme
- Functions relating to public rights of way
- Power to make standing orders both generally and as to contracts
- Power to appoint staff and to determine terms and conditions of employment
- Duty to appoint head of paid service, chief financial officer and monitoring officer
- Power to appoint proper officers
- Duty to approve accounts
- Power to make payments or provide benefits in cases of maladministration
- Members allowances
- Setting fees and charges for matters which are not within the remit of the executive
- Appointment of committees
- Arrangements for the joint discharge of functions with other local authorities
- Some enforcement issues

#### Functions which may be performed by the executive

- Determination of an appeal made against a decision made by or on behalf of the authority
- Functions relating to contaminated land
- Functions relating to control of pollution and air quality
- Power to inspect and detect statutory nuisances and the service of abatement notices (currently delegated to officers)
- Power to adopt sch 2 Noise and Statutory Nuisance Act 1993 (permission for loud speakers in public)
- Power to serve a notice under s.16 LG(MP)A 1976 and under s.330 T&CPA 1990 (currently delegated to officers)
- Appointments to outside bodies
- Making agreements with other local authorities for placing staff at the disposal of those authorities.
- Functions relating to local area agreements

## Functions not to be the sole responsibility of the executive

- Crime and disorder reductions strategy
- Development plan documents
- Licensing authority policy statements (liquor, entertainment, late night refreshment and gambling)
- formulating a plan or strategy for the control of the authority's borrowing, investments or capital expenditure or for determining the authority's minimum revenue provision
- budget (the executive prepare the budget but FC needs to approve and may refer back for amendment)

(NB the above lists are not exhaustive but summarise the main areas within the remit of a district council)

## Safeguards

- Where policy matters can be an executive function but the council has decided to reserve the matter to itself the executive cannot take the policy decision
- Where the executive proposes taking a decision which has financial impacts but which does not accord with the council's budget, its approved financial strategies or the council's financial regulations etc the executive cannot take that decision
- Where the executive proposes taking a decision which does not accord with a council adopted policy or strategy the executive cannot take that decision
- There is an override in cases of urgency with the approval of the chairman of overview and scrutiny or in his absence the chairman of the council.

## Exercise of Executive Powers

- The leader has all executive powers
- As an alternative to exercising those powers personally he may arrange for them to be exercised by:-
  - The executive

- A member of the executive (portfolio holder)
- A committee of the executive or
- An officer of the council
- If powers are given to the executive the executive may delegate to a committee of the executive or an officer (NB the executive cannot delegate to an individual councillor, even if a member of the executive)
- If power is given to a portfolio holder he has power to delegate to an officer
- The leader may direct that no such delegations are possible
- Delegation does not prevent the leader exercising the powers which have been delegated

#### Area Committees

- Executive functions can be delegated to area committees
- Rules on political balance apply
- Arrangements for discharge by area committees may include delegation to officers
- Delegation to area committees does not prevent the executive exercising powers

#### General Points

- The constitution must contain a provision that the leader determines the number of cabinet members (subject to the statutory limit above)
- The leader's term of office is 4 years although there are provisions which permit earlier removal
- The leader must appoint a deputy leader who serves as long as the leader although the leader may remove the deputy
- In the leader's absence the deputy must act as leader
- In the absence of both the leader and deputy the executive either acts as a whole in the leader's place or appoints one of its members to do so