

PRINCIPAL SCRUTINY COMMITTEE – 7 MARCH 2011

CABINET – 16 MARCH 2011

COUNCIL – 6 APRIL 2011

LEADERSHIP ARRANGEMENTS – CONSTITUTIONAL CHANGES

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

CONTACT OFFICER: Stephen Whetnall/Dave Shaw

TEL NO: 01962 848 221 dshaw@winchester.gov.uk

RECENT REFERENCES:

[CAB2067](#) – Leadership Arrangements – Outcome of Consultation – 13 October 2010

EXECUTIVE SUMMARY:

The Local Government and Public Involvement in Health Act 2007 required all councils to consider changing the system by which they take executive (Cabinet) decisions about council policies and services, by re-considering their decision making structures.

The two options were a strengthened role and more powers for the Leader, in the Leader with Cabinet model or a directly Elected Mayor with Cabinet.

After undertaking a public consultation exercise, it was agreed at a special meeting of Council held on 3 November 2010, that the Council adopts the strengthened Leader with Cabinet model for its executive arrangements, in accordance with the Local Government and Public Involvement in Health Act 2007, with effect from the 2011/12 Municipal Year. The Act requires the changes to be in force three days after the local elections i.e. 8 May 2011.

It was also agreed that a report be presented to Cabinet and Council on the consequential changes to the Constitution prior to the introduction of the new executive arrangements in May 2011.

This Report sets out the principal consequential changes to the Constitution that are necessary to introduce the strengthened Leader with Cabinet model.

The opportunity has also been taken to make any other necessary updates to the relevant sections of the Constitution.

The Appendices only contain extracts of those parts of the Constitution where changes are proposed – shown in tracking. The full Rules have not been reproduced to save on paper distribution.

Elsewhere on this agenda there is a separate report on changes to overview and scrutiny arrangements and impact on other committees (CAB 2132 refers). For convenience, if consequential amendments are necessary in the Procedure Rules covered by this Report then they have also been included here to avoid repetition. However, if the recommendations in Report CAB 2132 are amended then there may be a need to revisit some of the wording of the Procedure Rules in the Appendices.

Since the November 2010 meeting of Council, the Coalition Government has announced under its Localism Bill, details of how councils may revert to the traditional committee system. This Report outlines the current position.

RECOMMENDATIONS:

THAT CABINET RECOMMENDS TO COUNCIL:

That the following changes to the Constitution be made for the introduction of the New Executive Arrangements on 8 May 2011:

1. That the changes to the Articles of the Constitution in Appendix 1 be approved.
2. That the changes to the Council Procedure Rules in Appendix 2 be approved.
3. That the changes to the Cabinet Procedure Rules in Appendix 3 be approved.
4. That the changes to the Access to Information Procedure Rules in Appendix 4 be approved.
5. That no changes be made to the allocation of functions between Council and the Executive in the Local Choice Scheme in Part 3 (Section 1) of the Constitution. However, where the functions have been assigned to Cabinet as the Executive, the Leader should also be added to the text to reflect the fact that the Leader will in future determine the scheme of delegation to Cabinet.
6. That the Chief Executive be given delegated authority for decision making during the transitional period between 5 May 2011 and 18 May 2011 – by using the emergency powers procedure in Part 3 of the Constitution.
7. That the Corporate Director (Governance) be given delegated authority to make subsequent minor consequential changes to the Constitution and other approved documents to give effect to the above.

TO PRINCIPAL SCRUTINY COMMITTEE:

To consider whether to offer any comments or recommendations to Cabinet or Council on the issues raised in this report.

PRINCIPAL SCRUTINY COMMITTEE – 7 MARCH 2011

CABINET – 16 MARCH 2011

COUNCIL – 6 APRIL 2011

LEADERSHIP ARRANGEMENTS – CONSTITUTIONAL CHANGES

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

DETAIL:

1 Introduction

1.1 At its meeting on 3 November 2010, the Council agreed to adopt the strengthened Leader with Cabinet model for its executive arrangements. In adopting this model, consequential changes to the Constitution need to be made prior to the introduction of the New Executive Arrangements in May 2011.

2 Executive Decision Making Arrangements - The Strengthened Leader with Cabinet Model

2.1 The strengthened Leader with Cabinet Executive model has the following components under the City Council's present electoral arrangements.

2.2 The Leader is elected by Council following the City elections and is one of the City's 57 Councillors.

2.3 The Leader:

- Is elected until their term of office as a Councillor expires (where the Council operates elections by thirds).
- Determines the size of the Executive (Cabinet) (two or more up to a maximum of 10) for a term of up to 4 years.
- Appoints/dismisses a Deputy Leader.
- Appoints/dismisses Cabinet Members.
- Is responsible for all Cabinet functions.
- Can exercise all the Cabinet functions him/herself or may delegate functions to the Cabinet, Cabinet members individually, other Committees or Officers.

2.4 The Council as a whole is able to remove a Leader provided the Authority's Constitution (and Executive Arrangements) provide for this.

2.5 The role of the traditional civic Mayor remains unchanged.

3 Constitution

- 3.1 In reviewing the Constitution, the 2007 Act requires the Council to consider the extent to which the proposals would be likely to assist in securing continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 3.2 Regard has also been given to openness and transparency in decision-making in the way in which the proposed changes set out below have been developed. On this basis, although the law would allow the strengthened Leader to take most decisions in private, it is still envisaged that the most important executive decisions would be made in public at a Cabinet meeting. Where changes to the Council's Budget or Policy framework were required then the Leader or Cabinet would still be required to present proposals to full Council.
- 3.3 The following sections of the report refer to detailed changes required to the Council's Constitution to give effect the strengthened Leader system.

4 Articles of the Constitution

- 4.1 The proposed changes are set out in Appendix 1.
- 4.2 Article 7 reflects the fact that the Leader and other Cabinet Members can serve for a term of up to four years. The Leader determines appointments and the Scheme of Delegation. Further details are contained in the more detailed Procedure Rules outlined in the paragraphs below.
- 4.3 Article 11 has been amended to show that the Leader can authorise joint arrangements with other authorities for executive functions.

5 Council Procedure Rules

- 5.1 Appendix 2 shows the proposed changes to the Council Procedure Rules. These principally refer to:
- (a) Rule 1 – a change in the majority required to approve a suspension of the Procedure Rules from two thirds to one half – to comply with current case law since the Rule was originally drafted.
 - (b) A number of changes to the Rules recognise that the Leader now determines the appointment and role of Cabinet – rather than full Council.
 - (c) Rule 17 reflects the changed position that the Leader is appointed for their period of office as a councillor – unless specifically removed by the Council. Rule 17(14) has been added to allow removal of the Leader by full Council if it considers it appropriate.
 - (d) Rule 17 has also been amended to take out the specific size of certain committees – unless there is a legal or particular practical reason for leaving the numbers in. This is to avoid the need to frequently amend the Rules after Annual Council - because of decisions that are frequently made between groups to change committee sizes to help achieve political balance. It is not intended that there should be a significant change in committee sizes as a consequence.

6 Cabinet Procedure Rules

- 6.1 A number of changes to the Rules in Appendix 3 recognise that the Leader now determines the appointment and role of Cabinet – rather than full Council.
- 6.2 Rule 1.2 makes detailed provision for how decisions made by the Leader on determining the scheme of delegation are to be made, announced and recorded in writing. It recognises that the Portfolio Holder Decision Notice can be used as a part of this process as that is an option open to the Leader. In such circumstances the traditional Winchester practice of a stand still period of five days with an option for five other Members to ask for the decision to be made at Cabinet no longer applies. If Members wish to challenge the Leader after the event there are several other methods eg scrutiny where this could still be done.

7 Access to Information Procedure Rules

- 7.1 Appendix 4 sets out proposed changes as follows:
- a) Rule 17.3 has been updated to reflect current Winchester practice for an annual report to be brought to Scrutiny on decisions made that were not previously listed in the Forward Plan.
 - b) Rule 22 updates the procedures for Portfolio Holder Decision Notices. It takes account of the change in the law by which the Leader determines appointments and the nature and extent of the delegation, rather than full Council. For this reason a draft notice, with a five day stand still period for consultation with other Members, has not been included for appointments and changes to delegations by the Leader. Other members could still raise challenges in a public forum eg through scrutiny.
 - c) However, the draft notice procedure for consultation on policy issues is still included. There is no longer a right for five Members to require a decision to be made at Cabinet Meeting. This is because that is now a matter for the Leader to determine. However, Leaders will still need to have regard to views of other Members as to whether a decision should be delayed and taken in a wider meeting of Cabinet.

8 Local Choice Functions

- 8.1 Part 3 (Section 1) of the Constitution sets out the local choice functions. These are functions where the Council has the choice as to whether they should be the responsibility of Cabinet, a Committee or Council itself.
- 8.2 It is not proposed to make any changes to the allocation of the functions between the Executive and Council. However, where the functions have been assigned to Cabinet as the Executive, the Leader should also be added to the text to reflect the fact that the Leader will in future determine the scheme of delegation to Cabinet. This means the functions will be allocated to Leader or Cabinet.

9 Transitional Arrangements

- 9.1 Under the 2007 Act there is a need to make transitional arrangements for the exercise of executive powers between the date of the election on 5 May 2011 and appointment of the Leader at the Annual Council Meeting on 18 May 2011. It is proposed that this would be achieved by the Chief Executive exercising his emergency powers, if necessary.

10 Localism Bill

- 10.1 The Coalition Government announced that the Bill would contain provisions to give local authorities wider discretion over their governance arrangements. This would include the possibility of reverting to the traditional committee system as well as the Leader with Cabinet or Elected Mayor and Cabinet options.
- 10.2 The Bill gives more discretion in that the strengthened Leader provisions outlined in this paper resulting from the 2007 Act would no longer be required. The Council could, for example, revert to the leadership arrangements which currently exist.
- 10.3 However, any substantial change in the leadership arrangements or change to the traditional committee system would still require public consultation to be undertaken. Once the change had been adopted it would have to remain in place for five years.
- 10.4 All systems could still provide for scrutiny committees.
- 10.5 Much of the detail will be provided in regulations and statutory guidance which will only be available after the Bill becomes law. The Council will need to consider the position before the 2012/13 municipal year as the position becomes clearer.

OTHER CONSIDERATIONS:

11 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLAN (RELEVANCE TO):

- 11.1 The proposals are intended to reinforce the Council's practices as an Efficient and Effective Council.

12 RESOURCE IMPLICATIONS:

- 12.1 The strengthened Leader with Cabinet Model is not likely to result in any significant changes in the existing budget requirement. However, significant officer time will be needed initially to change the constitutional arrangements. Any impact on the role of the Leader will be taken into account in the review of Special Responsibility Allowances by the Independent Remuneration Panel in the autumn. However, it is not anticipated that any significant changes will be necessary.

13 RISK MANAGEMENT ISSUES

- 13.1 None, provided correct procedures are followed and any changes are accurately reflected in the Constitution.

BACKGROUND DOCUMENTS:

File in Democratic Services Team.

APPENDICES:

Appendix 1 - Consequential changes to the Articles of the Constitution.

Appendix 2 - Consequential changes to the Council Procedure Rules.

Appendix 3 - Consequential changes to the Cabinet Procedure Rules.

Appendix 4 - Consequential changes to the Access to Information Procedure Rules.

Appendix 1

Article 7 – The Executive (Cabinet)

7.01 Role

The Executive (referred to throughout this Constitution as the Leader or Cabinet) will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution. The Leader can undertake all of the executive functions personally or delegate to Cabinet, individual Councillors on Cabinet (Portfolio Holders) officers, or under joint arrangements.

7.02 Form and Composition

Cabinet will consist of the Leader together with not more than nine other Councillors appointed by the Leader Council.

7.03 The Leader

The Chairman will be a Councillor elected to the position of Leader by the Council. The Leader will hold office for a four year term until :-

- a) he/she resigns from the office; or
- b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension) or
- c) he/she is no longer a Councillor; or
- d) ~~the end of the municipal year, save that the Council may remove the Leader from office at an earlier date.~~

7.04 Other Cabinet Members

Other Members of the Cabinet shall hold office for a term up to 4 years until :-

- a) they resign from office; or
- b) they are suspended from being Councillors under Part 3 of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- c) they are no longer Councillors; or
- d) ~~the end of the municipal year, save that the Leader Council may remove~~ them from office, either individually or collectively, at an earlier date.

7.05 Proceedings of Cabinet

Proceedings of Cabinet shall take place in accordance with the executive procedure rules set out in Part 4 of this Constitution.

7.06 Responsibility for the Functions

The Corporate Director (Governance)~~City Secretary and Solicitor~~ will maintain a list in Part 3 of this Constitution setting out which individual Members of the Cabinet, Committees of the Cabinet, officers or joint arrangements are responsible for the exercise of particular executive functions.

~~Neither the Cabinet nor the Leader will authorise any individual Member of the Cabinet to exercise particular executive functions individually, without the approval of Council.~~

Committees of Cabinet can only include members of Cabinet.

Article 11 – Joint Arrangements

In the following rules, insert "Leader or" before "Cabinet":

Rule 11.01

Rule 11.02

Rule 11.03

Rule 11.04

Rule 11.05

WINCHESTER CITY COUNCIL

COUNCIL PROCEDURE RULES

This extract only includes the Rules where changes are proposed in tracking.

2. SUSPENSION

- (1) With the exceptions listed in (2) below, any of the following Rules may be suspended by a motion approved by at least ~~two-thirds~~ one half of the members present and voting. A motion to suspend any Rules will not be moved without notice unless at least one half of the whole number of Members are present.
- (2) The following Rules may not be suspended
 2. (suspension of Procedure Rules)
 3. (variation and revocation)
 24. (reference-up of decisions)
 26. (ruling of person presiding)
 32. (recording of votes)
- (3) Suspension can only be for the duration of the meeting.

3. VARIATION AND REVOCATION

Any motion to add to, vary or revoke these Procedure Rules may be considered or discussed by the Council only on a recommendation of the Leader, Cabinet, The Principal Scrutiny Overview and Scrutiny Committee or the Standards Committee or following a special Notice of Motion signed by a minimum of one third of the members of the Council.

PART 2 - COUNCIL MEETINGS

4. MEETINGS OF THE COUNCIL

(1) Ordinary Meetings

In addition to the annual meeting of the Council and any extraordinary meeting convened by the Mayor, or by members of the Council, ordinary meetings for the transaction of general business shall be held on such dates and times as the Council shall decide.

(2) EXTRAORDINARY MEETINGS OF THE COUNCIL

Those listed below may request the Corporate Director (Governance) to call Council meetings in addition to ordinary meetings:

- i) the Council by resolution
- ii) the Mayor
- iii) the Monitoring Officer

- iv) any five members of the Council if they have signed a requisition presented to the Mayor and if he/she has refused to call a meeting within seven days of the presentation of the requisition.

The business to be conducted at an extraordinary meeting shall be limited to the issue which has caused the meeting to be convened, in addition to questions under Council Procedure Rule 14. Other matters shall await the next ordinary meeting of the Council.

- (3) The procedure for selection of the Leader, chairmen, and selection of the Leader's appointment of Cabinet and the selection of committees is set out in Procedure Rule 17.

(4) NOTICE OF AND SUMMONS TO MEETINGS

The Corporate Director (Governance) will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear working days before a meeting, the Corporate Director (Governance) will send a summons signed by him or her by post to every member of the Council or leave it at their usual place of residence. The summons will give the date, time and place of each meeting and specify the business to be transacted.

10. MOTIONS WHICH MAY BE MOVED WITHOUT NOTICE

The following motions may be moved without notice:-

- (1) Appointment of a Chairman of the meeting at which the motion is made.
- (2) Motions relating to the accuracy of the minutes, closure, adjournment, order of business, next business, or reference to the Leader or Cabinet or a Committee.
- (3) Appointment of ~~Cabinet, Committees~~ or members thereof, so far as arising from an item mentioned in the summons to the meeting.
- (4) Adoption of reports and recommendations of the Leader, Cabinet, Committees or officers and any consequent resolutions.
- (5) That leave be given to withdraw a motion.
- (6) Amendments to motions.
- (7) Authorising the sealing of documents.
- (8) To change the order of business in the agenda
- (9) Suspending a Council Procedure Rule
- (10) To exclude the public and press in accordance with the Access to Information Rules
- (11) That a member named under Procedure Rule 29 be not further heard or do leave the meeting.
- (12) Giving consent of the Council where the consent of the Council is required by this Constitution.

- (13) To refer something to an appropriate body or individual
- (14) To proceed to the next business
- (15) That the question now be put
- (16) To adjourn the debate
- (17) To adjourn a meeting

PART 3 – CABINET, COMMITTEES AND SUB-COMMITTEES

17. ANNUAL ELECTION OF CHAIRMEN AND SELECTION OF CABINET AND COMMITTEES

- (1) The Council at its Annual Meeting shall, in addition to electing a Mayor and Deputy Mayor

- (a) elect from those validly nominated:

- (i) The Leader of the Council who will also be the Chairman, Vice-Chairman and not more than eight other members of the Cabinet. The term of office of the Leader starts on the day of his/her appointment as Leader and they will hold office for a four year term, which ends on the day the Council holds its first annual meeting after the Leader's normal day of retirement as a councillor unless he/she: -

- is removed from office or resigns
- ceases to be a councillor
- is disqualified from being a councillor before that day.

In the period following the local elections up until the Annual Meeting of Council, urgent decisions will be taken by the Chief Executive acting under his emergency powers if the office of Leader or Deputy Leader is vacant until such time as a Leader is appointed by Council.

- (ii) The Chairmen and membership of the Principal Scrutiny Overview and Scrutiny Committee, and of the Scrutiny Panels.
- (iii) The Chairmen and membership of the Appeals and Disputes Committee, the Audit Committee, the Housing (Appeals) Committee, Personnel Committee, Planning Development Control Committee, the Licensing and Regulation Committee, the Personnel Committee, and the Standards Committee, the Housing (Appeals) Committee, Statement of Accounts Committee and the Appeals and Disputes Committee.

- (2) The Cabinet shall consist of the Leader, as Chairman and not more than nine other members appointed by the Leader. the following members elected by the Council:

The Leader shall announce the initial appointments to Cabinet at the Annual Meeting of the Council. The Leader appoints one of the members of the Cabinet (a Portfolio

Holder) to be his/her deputy and be Vice-Chairman of Cabinet. The Deputy Leader will hold office until the end of the term of office of Leader (unless the person resigns as Deputy Leader, ceases to be a councillor or is disqualified or removed from Cabinet by the Leader). The Leader may, if he/she thinks fit, remove the Deputy Leader from office, but must then appoint another person in his/her place. The Leader may at any time remove Portfolio Holders from the Executive and change Portfolio Holder's areas of responsibility. The Leader will report to the Council on all appointments and changes to the Cabinet.

— Chairman and Vice-Chairman

— Not more than eight other members appointed by the Council

(3) The Principal Scrutiny Overview and Scrutiny Committee shall consist of the Chairman and not more than 12 such other number of members appointed by the Council. The meeting shall be chaired by a Member from a different group to the group of the Leader.

(4) The Audit Committee shall consist of the Chairman and such other number of members appointed by the Council. The meeting shall be chaired by a Member from a different group to the group of the Leader.

(5) No member of the Cabinet may also serve as a member of The Overview and Scrutiny Committee or the Audit Committee or any other overview and scrutiny committee.

~~(3) The Planning Development Control Committee shall consist of the Chairman and not more than 10 other members appointed by the Council and the Licensing & Regulation Committee shall consist of the Chairman and not more than 14 other members appointed by the Council.~~

~~(4) The Personnel Committee shall consist of the Chairman and not more than 10 other members appointed by the Council and the Housing (Appeals) Committee shall consist of the Chairman and two other members appointed by Council.~~

~~(5) The Scrutiny Panel overview and scrutiny committees of the Council shall be as follows:~~

- ~~1. Environment~~
- ~~2. Local Economy~~
- ~~3. Resources~~
- ~~4. Social Issues~~

~~The Scrutiny Panels shall consist of the Chairman and not more than 11 other members appointed by the Council.~~

~~The Social Issues Scrutiny Panel shall co-opt two members of the Council's tenant consultative group, TACT (plus the deputies), to sit as non-voting members of the Committee.~~

(6) The Personnel Committee shall consist of the Chairman and such other number of members appointed by the Council and the Housing (Appeals) Committee shall consist of the Chairman and such other number of members appointed by Council.

(7) The Standards Committee shall consist of the Independent Chairman and not more than seven members appointed by the Council. In addition, the Council shall appoint to the Standards Committee ~~three~~^{four} other independent persons, in compliance with legislation relating to the appointment of independent members to local authority Standards Committees. In addition, it will appoint four parish representatives. Such persons will be able to vote at meetings of the Committee. The Chairman must be drawn from the independent members on the Committee.

~~(7) No member of the Cabinet may also serve as a member of the Principal Scrutiny Committee, or any overview and scrutiny Committee.~~

~~— Appeals and Disputes Committee —~~

~~(9) (a) The Council shall appoint each year an Appeals and Disputes Committee consisting of a Chairman elected by the Council and eight other members. No member of the Appeals and Disputes Committee shall also serve at the same time as a member of either the Cabinet or Personnel Committee.~~

~~(b) Appeals and disputes shall be heard as follows —~~

~~(i) by the Chairman plus two members drawn from the pool of eight, or~~

~~(ii) in the absence of the Chairman, the three members shall be drawn from the pool of eight to hear an appeal or dispute and be given authority to appoint their own Chairman for the meeting.~~

~~(iii) members shall be drawn in rotation in alphabetical order subject to availability.~~

~~— Other Committees —~~

~~(8) The Planning Development Control Committee shall consist of the Chairman and such other number of members appointed by the Council and the Licensing & Regulation Committee shall both consist of the Chairman and such other number of members appointed by the Council.~~

~~(940) Licensing Sub-Committee~~

(a) The Licensing Sub-Committee appointed by the Licensing and Regulation Committee shall comprise three members drawn of such other number of from members as determined by of the Licensing and Regulation Committee.

(b) Each meeting shall have the composition of the Sub-Committee determined as follows:-

(i) one member drawn from the following pool:- Chairman, Vice-Chairman, and three others — approved for the purpose by the Licensing and Regulation Committee;

(ii) any two other members of the Licensing and Regulation Committee.

(c) Members shall be drawn in rotation by the Head of Democratic Services in alphabetical order subject to availability.

- (d) For licensing applications involving premises in a particular ward, the ward member(s) shall not be eligible to sit on the Sub-Committee (although (subject to the provisions of the Code of Conduct) they may attend and speak at the discretion of the Chairman).

(10) Appeals and Disputes Committee

(a) The Council shall appoint each year an Appeals and Disputes Committee consisting of a Chairman elected by the Council and such other number of members that it determines. No member of the Appeals and Disputes Committee shall also serve at the same time as a member of either the Cabinet or Personnel Committee.

(b) Appeals and disputes shall be heard as follows -

(i) by the Chairman plus two members drawn from a pool of members as determined by the Council, or

(ii) in the absence of the Chairman, the three members shall be drawn from the pool of members as determined by the Council to hear an appeal or dispute and be given authority to appoint their own Chairman for the meeting.

(iii) members shall be drawn in rotation in alphabetical order subject to availability.

(11) Housing (Appeals) Committee

The Council shall appoint a Housing (Appeals) Committee consisting of a Chairman elected by the Council and two Members (and Deputies).

(12) Other Committees

The Council shall appoint such other Committees as it so decides after considering a report thereon from the Cabinet, to whom any proposals for additional Committees shall be referred for report. The Overview and Scrutiny Committee shall comment on any proposals for any additional overview and scrutiny committees.

(143) Deputy Members

Deputy Members may be appointed to Committees and Sub-Committees on the following basis -

(a) When appointments are made to any Committee or Sub-Committee, each political group of the Council shall be entitled when nominating its representatives, if it so wishes, to nominate:

(i) up to three further members as Deputy Members in respect of the Planning Development Control Committee. The appointments will be subject to political balance requirements, with the largest political group having three deputies; other groups in accordance with the political balance formula;

(NB: The membership of Planning Development Control (Viewing) Sub-Committee is drawn from those Members that attended the Planning Development Control Committee meeting which set up the Viewing Sub-Committee. As the Viewing Sub-Committee will not hear a full repeat of the officer's representation, nor any public participation, new deputies that did not attend the original Planning Development Control Committee cannot participate in the subsequent Viewing Sub-Committee).

(ii) up to two further members as Deputy Members in respect of ~~Principal Scrutiny~~ The Overview and Scrutiny Committee;

(iii) one further member as a Deputy Member in respect of the following Committees:

~~Overview and Scrutiny Committees~~

Personnel Committee

Housing (Appeals) Committee

~~Statement of Accounts~~ Audit Committee

Licensing and Regulation Committee

Any other overview and scrutiny or task and finish committee

(b) There shall be no Deputy or substitute members on the Cabinet or Standards Committees.

(c) A Deputy Member shall only serve as a Member of the relevant body at any meeting at which another Member of the same political group is absent for the entire meeting.

(d) No substitutions of membership may be made during the course of the meeting.

(e) Deputy Members will have all the powers and duties of any ordinary member of the committee but will not be able to exercise any special powers or duties exercisable by the person they are deputising for.

(14). Absent Leader

If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader must act in the Leader's place. If the Deputy Leader is unable to act or the office is vacant, the Cabinet must act in the Leader's place or arrange for a member of the Cabinet to do so.

(15). Removal of Leader from office

The Leader may be removed during their four year term of office by way of resolution by a simple majority of the Council. If the Council passes a resolution to remove the Leader, a new Leader is to be elected: -

(a) at the meeting at which the Leader is removed from office, or

(b) at a subsequent meeting.

18. VICE-CHAIRMAN

Each of the following committees shall elect a Vice-Chairman at its first meeting

~~Principal Scrutiny~~ The Overview and Scrutiny Committee
Planning Development Control Committee
Licensing and Regulation Committee
Personnel Committee
Housing (Appeals) Committee
~~Statement of Accounts~~ Audit Committee
Standards Committee
Any other overview and scrutiny or task and finish Committee

19. CASUAL VACANCIES

Casual vacancies shall be filled for the remainder of the municipal year according to the following table -

(1) <u>Leader of the Council and Chairman of Cabinet</u>	By the automatic transference of the Vice-Chairman <u>Deputy Leader</u> (subject to re-affirmation by the Council at its next meeting)
(2) Chairman of any Committee	As soon as possible by the Council
(3) Vice-Chairman	As soon as possible by the Committee concerned
(4) Membership of Cabinet or any Committee	By the Council <u>Leader of the Council for Cabinet or Council for any Committee</u>

20. APPOINTMENT OF CABINET COMMITTEES, SUB-COMMITTEES AND
OTHER COMMITTEES

- (1) The Leader or Cabinet may appoint Cabinet Committees on a continuing or ad hoc basis to deal with any matter relevant to the business or responsibility of the Cabinet, and may delegate authority for action to such Committees. No member may be appointed to or serve on a Committee of the Cabinet unless that member is at that time a member of the Cabinet.
- (2) Each Committee may appoint Sub-Committees on a continuing or ad hoc basis to consider any matter relevant to the business or responsibility of the Committee, subject, in all cases, other than in relation to the Planning Development Control Committees, to no objection being raised by the Leader or Cabinet to the principle of the appointment of a Sub-Committee in each case, and to the terms of reference. If the Leader or Cabinet raises objection in respect of a body to deal with non-executive functions, the matter will be referred to Council for determination.
- (3) Only a member of a Sub-Committee who is a member of the parent Committee may be elected as Chairman of that Sub-Committee, but this requirement shall not debar the election (in the absence of the Chairman)

of a member who is not a member of the parent Committee to preside at a particular meeting.

- (4) The selection of the Chairman and other Members of the Standards Sub-Committee for individual cases shall be as follows (subject to availability):
- (a) the Chairman should be selected by the Head of Democratic Services in alphabetical rotation from the independent members;
 - (b) when the meeting is considering a complaint against a City Councillor, membership should consist of the Chairman and two Councillors from more than one political group selected by the Head of Democratic Services in alphabetical rotation from the membership of the Committee);
 - (c) when the meeting is considering a complaint against a Parish Councillor, membership should consist of the Chairman, Parish Representative (selected by the Head of Democratic Services in alphabetical rotation from the Parish Representatives), and three Councillors (from more than one political group selected by the Head of Democratic Services in alphabetical rotation from the membership of the Committee).
 - (d) no Committee Member should be included in the selection if the complaint is against a Member of the same parish, or District ward, as the Committee Member.

24. REFERENCE-UP OF DECISIONS

- (1) Where a relevant matter, being a matter of decision by the Cabinet, a Cabinet Committee, the Audit Committee, the Planning Development Control Committee, the Licensing and Regulation Committee, the Personnel Committee or the Standards Committee, or any sub-committee of any of these bodies, has been voted on by that body, and immediately following the declaration of the result of a vote, a resolution under this Procedure Rule is proposed and approved by no less than one quarter of the members of the body who are present and who have voted on the initial matter, the decision of that committee or sub-committee as to that matter shall not take immediate effect, but shall be referred -
- (a) in the case of a decision by the Cabinet or by the Audit Committee, the Planning Development Control Committee, the Licensing and Regulation Committee, the Personnel Committee or the Standards Committee, to the next competent meeting of the Council,
 - (b) in the case of a decision by a Cabinet Committee, to the next competent meeting of the Cabinet,
 - (c) in the case of a decision by a sub-committee of the Audit Committee, the Planning Development Control Committee, the Licensing and Regulation Committee, the Personnel Committee or the Standards Committee, to the next competent meeting of the parent committee ("the relevant committee") which constituted that sub-committee.
- (2) A decision on a matter referred under paragraph (1) shall take effect only when reviewed and approved -

- (a) by the Council, where the decision was taken by the Cabinet or a committee, and
 - (b) by the Leader, Cabinet or the relevant committee, where the decision was taken by a sub-committee.
 - (c) if the decision is an executive matter falling within the budget and policy framework, then if Council proposes a different course of action, its views will be reported to the Leader or Cabinet before its final determination.
- (2) Nothing in paragraph (1) or (2) above shall be construed as preventing a matter referred to the Cabinet or to a committee (other than a joint committee) under paragraph (1) (b) from being referred by that body to the Council under paragraph (1) (a).
- (4) Any Chairman of a decision making committee may, at his/her discretion, refer up to Council any matter identified during the meeting.
- (5) In paragraph (1) above a relevant matter is a matter arising in relation to functions falling to be discharged by -
- (a) The Leader, Cabinet or a Cabinet committee under Part III of the Local Government Act 2000.
 - (b) a committee or sub-committee of the Council in pursuance of arrangements made under Section 101 of the Local Government Act 1972;
 - (b) a relevant joint committee appointed in pursuance of Section 20 of the Local Government Act 2000.
- other than a matter concerning the appointment of or disciplinary action against an officer of the authority, or in relation to which the relevant body has heard representations from any person other than a member or officer of the authority, in a quasi-judicial or other matter where the rules of natural justice are applied.

PART 5 - MATTERS AFFECTING MEMBERS

35. ATTENDANCE OF NON-MEMBERS AT MEETINGS

- (1) Subject to paragraph 6 below, the Chairman or Vice-Chairman of the Cabinet may attend and speak but may not vote at a meeting of an The Overview and Scrutiny Committee or sub-committee, and any member of the Cabinet who has been allocated a portfolio of interest which relates to matters which come within the province of an overview and scrutiny committee or sub-committee may attend and speak but not vote at such meeting when the meeting is considering a matter to which the portfolio relates.
- (2) The Leader and other Portfolio Holders may attend and speak but not vote at any meeting of the Audit Committee, subject to any ruling on the matter made by the Chairman given with reasons.

- (23) Subject to para 6 below, the Chairman and Vice-Chairman of a committee may attend and speak at a meeting of any sub-committee appointed by that committee, but may not vote unless appointed as a voting member.
- (34) Subject to para 6 below, with the exception of meetings of the Appeals and Disputes Committee, where the Chairman shall exercise discretion over the attendance of Members (on the basis that no Member is excluded unnecessarily) every Member of the Council shall -
- (a) be entitled to attend the Cabinet, Cabinet Committee or any committee, sub-committee, working party, panel, etc, meeting as an observer
 - (b) be permitted to remain for the exempt and confidential sections of that meeting unless the body resolves otherwise (having first heard the Member's reasons for wishing to remain) and provided that the Member has no personal and prejudicial interest in the matters to be discussed, which under the Model Code of Conduct would prevent attendance at the meeting.
 - (c) be permitted to speak on a particular item (having given notice prior to the commencement of the meeting to the person presiding).
- (5) Subject to paragraph 6 below, the Chairman of the body may invite any person, whether a member of the Council or not, to give evidence or advice in a manner to be determined by the Chairman, on a specific item on the agenda.
- (6) Subject to paragraph 6 below, a member of the Council who has moved a motion which has been referred to the Cabinet or to any Committee or Sub-Committee shall have notice of the meeting at which it is proposed to consider the motion. He/she shall have the right to attend the meeting and if he/she attends, shall have an opportunity of explaining the motion.
- (7) No Member of the Council shall be entitled to attend a meeting of an overview and scrutiny committee when it is undertaking the scrutiny function in respect of a decision made by a body of which they were a member. In such circumstances, members will declare a personal and prejudicial interest and leave the room unless a dispensation has been granted by the Standards Committee or the committee requests them to remain under the provisions of Sections 21(13)(a) of the Local Government Act 2000 in order to provide additional information and/or answer questions.

In the following Rules, insert "Leader" in addition to "Cabinet" (eg "Leader, Cabinet" or "Leader and/or Cabinet" as appropriate to the context):

Rule 7(1)(J)
Rule 11(2)
Rule 13
Rule 16(8)(d)(e)(f)

Appendix 3

CABINET PROCEDURE RULES

1. Operation of the Cabinet

1.1 Making Executive Decisions

The Leader may, within the Council's budget and policy framework, decide how the executive functions are to be exercised. The discharge of executive functions may be undertaken by the following:-

- a) The Cabinet as a whole
- b) A committee of the Cabinet
- c) An individual member of the Cabinet (Leader or Portfolio Holder) ~~provided that full Council has approved the arrangement.~~ (the procedure for decision making by an individual Member of Cabinet is set out in paragraph 22 of the Access to Information Procedure Rules)
- d) An officer
- e) An area committee
- f) Joint arrangements
- g) Another local authority

1.2 Delegation by the Leader

- a) At the Annual Meeting of Council the Leader will announce the names of councillors appointed to Cabinet, including the Deputy Leader, confirmed in a signed portfolio holder decision notice.
- b) At Cabinet following the Annual Meeting of Council, the Leader will determine:
 - (i) the extent of any authority delegated to Cabinet Members individually in respect of their portfolios, including the details of any limitations on their authority.
 - (ii) the terms of reference and constitution of such Cabinet Committees as the Leader appoints and the names of Cabinet Members appointed to them.
 - (iii) the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements and the names of the Cabinet members appointed to any joint committee for the coming year and
 - (iv) the nature and extent of any delegations of executive functions to officers with details of any limitation on that

delegation, and the title of the officer to whom the delegation is made.

- c) The Leader may make further changes to delegations during the Municipal Year.
- d) The Leader will sign a written record of delegations made by him/her for inclusion in the Council's Scheme of Delegation at Part 3 of this Constitution. Until such time as the Leader has presented such record the existing delegations under the Council's Constitution to the Leader, Cabinet, portfolio holders and officers remain in force. The written record required by this Procedure Rule may be contained in a Minute of Cabinet signed by the Leader or in a signed portfolio holder decision notice. The requirements for a draft portfolio holder decision notice in paragraph 22 of the Access to Information Procedure Rules do not apply to appointments or delegations under the Cabinet Procedure Rules. The Corporate Director (Governance) will notify members and officers affected by changes in the Scheme of Delegation.

4.21.3 Sub-delegation of the Cabinet Functions

- a) Unless the Leader directs otherwise, A a committee of the Cabinet or an individual member of the Cabinet responsible for an executive function may delegate further to an officer.
- b) Unless the Council directs otherwise, and provided any statutory requirement for Council approval is obtained, the Leader or Cabinet may enter into joint arrangements or agency agreements with other local authorities for the discharge of executive functions.
- c) Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

4.31.4 The Council's Scheme of Delegation and Executive Functions

The Corporate Director (Governance) will maintain an updated Scheme of Delegation of Executive Functions in accordance with decisions made by full Council, the Leader and Cabinet, and in accordance with Part 3 of this Constitution.

4.41.5 Conflicts of Interest

- a) Where the Leader has a conflict of interest this should be dealt with as set out in the Councils Code of Conduct for Members in Part 5 of this Constitution.
- b) If every Member of the Cabinet has a conflict of interest this should be dealt with as out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

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

4.61.6 Cabinet Meetings – When and Where

The Cabinet will normally meet at least once a month (August excepted) in accordance with a programme of meetings that it has approved for publication. The Leader (or in his/her absence the Deputy Leader) may cancel programmed meetings where he/she considers that there is insufficient business or no urgency of business to justify the holding of the meeting. Most meetings of the Cabinet will be held at the Guildhall, The Broadway, Winchester although, on occasion, other venues may be agreed by the Leader.

4.61.7 Public or Private Meetings of Cabinet

The Access to Information Rules in Part 4 of this Constitution set out the requirements covering public and private meetings. In accordance with the principles of decision making set out in Article 13 of the Constitution, the Cabinet will meet in public whenever possible.

4.71.8 Quorum

The quorum for a meeting of the Cabinet shall be three and, for a Cabinet committee, shall be three.

4.81.9 Decision taking by the Cabinet

- a) Executive decisions which have been delegated to the Cabinet as a whole will be taken at meetings convened in accordance with the Access to Information Rules in Part 4 of the Constitution.
- b) Where executive decisions are delegated to a committee of the Cabinet, the rules applying to executive decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

2. The Conduct of Cabinet Meetings

2.1 The Chairman

If the Leader of the Council is present he/she will preside as Chairman. In his/her absence the Deputy Leader will preside. If the Deputy Leader is not present then the Cabinet will appoint a person from among those present to preside at that meeting.

2.2 Attendance at Cabinet

The Access to Information Rules in Part 4 of this Constitution set out who may attend Council and committee meetings, including Cabinet.

2.3 Cabinet Business

Whilst it is not possible to give a definitive list of all items that would be considered for a meeting of the Cabinet, the following is a general indication of the business that will be conducted:

- a) Consider the need to establish any committees of Cabinet.
- b) Declarations of Interest, if any.
- c) Consideration of the minutes of the last meeting.
- d) Matters referred to the Cabinet (whether by an overview and scrutiny committee, or by the Council) for reconsideration in accordance with the provisions contained in the Overview and Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution.
- e) Consideration of reports and referred minutes from overview and scrutiny committees.
- f) Matters set out in the agenda for the meeting, which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure Rules set out in Part 4 of this Constitution.

2.4 Consultation

All reports to the Cabinet from any Member of Cabinet or an officer of proposals relating to the budget and policy framework, must contain details of the nature and extent of consultation with stakeholders and relevant overview and scrutiny committees, and the outcome of that consultation. Reports about other matters will set out the details and outcome of the consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

2.5 Placing Items on the Cabinet Agenda

- a) The Leader will decide upon the agenda for each meeting of the Cabinet. He/she may put on the agenda any matter which he/she wishes, whether or not authority has been delegated to the Cabinet, a committee of Cabinet or any Member (Portfolio Holder) or officer in respect of that matter. The Corporate Director (Governance) will comply with the Leader's request in this respect.
- b) Any Member of the Council may require the Corporate Director (Governance) to make sure that an item is placed on the agenda at the next available meeting for consideration, provided that at least 14 working days notice prior to the date of the meeting is given. If he/she receives such a request the Corporate Director (Governance) will make the arrangements. No Member (other than the Leader) may give notice of more than one item of business at any one meeting. The agenda for the meeting will give the name of the Member who asked for the item to be considered.

- c) The Corporate Director (Governance) will ensure that an item is placed on the agenda of the next available meeting of Cabinet where a relevant overview and scrutiny committee or the full Council has resolved that an item be considered by Cabinet.
- d) The Head of Paid Service, Monitoring Officer and/or Head of Finance may include an item for consideration on the agenda of a Cabinet meeting and may require the calling of such a meeting in pursuance of their statutory duties. In other circumstances, where any two of the Head of Paid Service, Head of Finance and Monitoring Officer, are of the opinion that a meeting of Cabinet needs to be called, to consider a matter that requires a decision, they may jointly include an item on the agenda at the next available Cabinet meeting. If there is no meeting of the Cabinet soon enough to deal with the issue in question, then the person(s) entitled to include an item on the agenda may also require that a meeting be convened at which the matter will be considered.

Appendix 4

ACCESS TO INFORMATION PROCEDURE RULES

This extract only includes the Rules where changes are proposed in tracking.

1 Scope

1.1 These Rules apply to all meetings of the full Council, overview and scrutiny committees and their sub committees, area committees, Audit Committee, Standards Committee, regulatory committees and their sub committees and public meetings of the Cabinet its committees and Joint Committees (together called meetings).

1.2 These Rules also apply to the Standards Committee and its sub-committees subject to any procedural differences contained in statute or adopted by the Committee in respect of considering and determining individual cases. In particular the Assessment and Review Sub-Committees have their own procedures outside the scope of these Rules.

17. Reports to Council

17.1 If an overview and scrutiny committee thinks that a key decision has been taken which is not

- a) included in the Forward Plan.
- b) the subject of the general exception procedure.
- c) the subject of an agreement with a relevant overview and scrutiny committee chairman or the Mayor/Deputy Mayor of the Council under Procedure Rule 16.

the committee may require the Cabinet to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the committee, but is also delegated to the Corporate Director (Governance), who shall require such a report on behalf of the committee when so requested by the chairman or any five members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee.

17.2 Cabinets Reports to Council

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

17.3 Annual Quarterly Reports on General Exception and Special Urgency Decisions - Monitoring of the Forward Plan.

In any event the Leader of the Council will submit annual/quarterly reports to The Overview and Scrutiny Committee ~~the Council~~ on the executive decisions taken in the circumstances set out in Procedure Rule 15 (General Exceptions) and Procedure Rule 16 (Special Urgency) in the year preceding three months. The report will

include the number of decisions so taken, reasons for departure from the Forward Plan and the summary of the matters in respect of which those decisions were taken.

22. Decisions by Individual Members of Cabinet

22.1 Reports intended to be taken into account

Where an individual member of the Cabinet proposes to make an executive decision receives a report which he/she intends to take into account in making any decision, then he/she will not make the decision until at least five clear days after publication of a draft decision notice, including any recommendation as to action to be taken receipt of that report. Publication of draft decision notices is not required in respect of decisions by the Leader to make appointments or to amend the Scheme of Delegation in Part 3 of the Constitution.

Before any draft decision notice report is referred to the decision maker by the Corporate Director (Governance), the Chief Executive and Head of Finance will be entitled to be consulted.

22.2 Provision of Copies of Draft Decision Notices Report to Overview and Scrutiny Committees and Other Members of the Council

On publication of a draft decision notice giving of such a report to an individual decision-maker, the Corporate Director (Governance) will provide give a copy to the Chairman and Vice Chairman of Principal The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. Aall Members of the relevant Scrutiny Panel, as determined Council will also be notified -by the Corporate Director (Governance). If five or more Members from those informed so requirerequest, the Leader may require the matter towill be referred to Cabinet for determination.

However, the requirement for a draft decision notice will not apply to appointments by the Leader. Nor does it apply to changes to the Scheme of Delegation to Cabinet, Cabinet Committees, individual portfolio holders or officers. The record of the decision referred to in Rule 22.3 below still applies in these instances.

22.3 Record of the Individual Decision

As soon as reasonably practicable after an executive decision has been taken by an individual member of the executive, or a key decision has been taken by an officer, he/she will prepare, or instruct the Corporate Director (Governance) to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. In addition, a summary of decisions taken by Members will be included in the Democratic Services UpdateMembers' Bulletin.

The provisions of Procedure Rules 7 and 8 (Inspection of Documents after Meetings) will also apply to the making of decisions by individual members of the executive. This does not require the disclosure of exempt or confidential information or advice from a political assistant.