

## **Article 13 – Decision Making and allocation of functions between the Council and Executive**

### **1. Responsibility for decision making**

- 1.1 Section 13 of the Local Government Act 2000 provides that all the functions of the Council shall be functions of the Executive (Cabinet) except in so far as they are reserved to the Council by regulations made under the Act (or by subsequent or other legislation). The reservation of functions to the Council is made under The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 1.2 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended ('the Regulations') define those functions:
- (a) which must not be discharged by the Executive
  - (b) which may be the responsibility of the Executive and
  - (c) which may not be the sole responsibility of the Executive and
  - (d) circumstances in which functions which would otherwise be functions of the Executive fall to be discharged other than by the Executive
- 1.3 The Council therefore only has discretion to define the split of functions between the Council ("Council functions") and the Executive ("Executive functions") in respect of those which fall within categories (b) and (c) above.
- 1.4 "Council Functions" shall therefore comprise:
- (a) those functions which are reserved as Council functions by the Act, or by other or subsequent legislation
  - (b) those functions which are reserved as Council functions by Regulation 2 and Schedule 1 of the Regulations or subsequent regulations made under the Act
  - (c) the following functions set out in Regulation 3 and Schedule 2 of the Regulations:
    - (i) under paragraph 2 of that Schedule, any appeal in respect of a decision which is a Council function
    - (ii) under paragraphs 7 and 8 of that Schedule, the making of arrangements for questions on police matters at Council meetings and the appointment of Members to the Police Authority
    - (iii) under paragraph 16 of that Schedule the obtaining of information as to interests in land under section 330 of the Town and Country Planning Act 1990
    - (iv) under paragraph 18 of that Schedule, the making of agreements for the execution of highways works

- (d) the adoption or approval of plans and strategies (the "Policy Framework") set out in Schedule 3 of the Regulations together with such other plans and strategies as the Council may identify from time to time for this purpose

1.5 The Council may make arrangements under section 101 of the Local Government Act 1972 for the discharge of any of its functions by:

- (a) a Committee
- (b) a Sub-Committee
- (c) a Joint Committee
- (d) another local authority
- (e) an Officer

1.6 The arrangements for the discharge of functions in relation to Committees are set out in Chapter 5, and in relation to the Scheme of Delegation are set out in Chapter 6 of this Constitution.

1.7 Under section 15 (2) of the Local Government Act 2000, the Council may make provision that specific Executive Functions shall be allocated to, and discharged by:

- (a) the Executive / Cabinet (as a body)
- (b) an individual Member of the Executive / Cabinet
- (c) a Committee of the Executive / Cabinet
- (d) an Officer

Note: The law has been amended in England so that an Executive Leader alone will make the initial delegations (which the Executive / Cabinet or Officers, may then develop for those functions allocated to them).

1.8 The Council has provided that actions in connection with Executive Functions shall be allocated to the Cabinet (except in so far as allocated to an individual Member of the Cabinet) and accordingly under section 14 (3) of the Act the Cabinet can either discharge such functions itself or delegate them to an Officer, unless the Leader has determined otherwise (in the case of a function which he has arranged to be discharged by the Cabinet, a Member of the Cabinet or a Committee of the Cabinet).

## **2. Principles of decision making**

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

- (a) Due regard for the individuals and communities served by Thurrock Borough Council
- (b) Proportionality (i.e. the action must be proportionate to the desired outcome)

- (c) Due consultation in line with the Council's consultation strategy as agreed from time to time and the taking of professional advice from Officers
- (d) Respect for human rights
- (e) A presumption in favour of openness
- (f) Clarity of aims and desired outcomes (i.e. link between strategy and implementation)
- (g) Consistent with the Council's Budget and Policy Framework

### **3. Types of decision**

#### **Decisions reserved to full Council**

- 3.1 Decisions relating to the functions listed in Article 4 (in Chapter 2) will be made by the full Council and not delegated.

#### **Key decisions**

- 3.2 A key decision means an executive decision which is likely:

- (a) to result in the Council incurring expenditure which is, or the making of savings which are, significant (namely £500,000 or above per annum), having regard to the Council's Budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effect on communities living or working in an area comprising two or more electoral wards in the area of the Council

- 3.3 A decision maker may only make a key decision in accordance with the requirements of the Executive / Cabinet Procedure Rules set out in Chapter 3 of this Constitution.

#### **Other decisions**

- 3.4 The Council has appointed a number of Committees to carry out certain prescribed functions that cannot be undertaken by the Executive / Cabinet. These Committees and their responsibilities are described in Chapter 5 of the Constitution.

### **4. Rules for Decision making**

- 4.1 The Council, the Executive / Cabinet (including the Cabinet, any Committee of Cabinet and individual Members of the Cabinet), the Overview and Scrutiny Committee and Review Committees and other Committees and Sub-Committees established by the Council will follow the Rules relating to that body set out in this Constitution when considering any matter.

### **5. Procedure for Decision making by Council bodies acting as tribunals**

- 5.1 The Council, a Councillor or an Officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) - civil rights and obligations of any person will follow a proper procedure which accords in so far as is

possible with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

## **6. Scrutiny of Decisions**

- 6.1 The Council has appointed Overview and Scrutiny Committees to scrutinise decisions taken by the Executive / Cabinet. The responsibilities and terms of reference of these Committees are described in Chapter 4 of the Constitution.