

Notice of Meeting

Governance and Audit Committee

Monday, 26th November, 2012 at 6.00 pm
in Council Chamber Council Offices
Market Street Newbury

Date of despatch of Agenda: Friday 16 November 2012

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Andy Day / Moira Fraser on (01635) 519459 / (01635) 51904

e-mail: aday@westberks.gov.uk / mfraser@westberks.gov.uk

Further information and Minutes are also available on the Council's website at www.westberks.gov.uk



Agenda - Governance and Audit Committee to be held on Monday, 26 November 2012
(continued)

To: Councillors Jeff Beck (Chairman), Paul Bryant, David Holtby, Tony Linden, Julian Swift-Hook (Vice-Chairman), Tony Vickers and Quentin Webb
Substitutes: Councillors Peter Argyle, Alan Macro and David Rendel

Agenda

Part I

Page No.

1. **Apologies**
To receive apologies for inability to attend the meeting (if any).
2. **Minutes** 1 - 8
To approve as a correct record the Minutes of the meeting of this Committee held on 10 September 2012 and the Special Meeting held on the 08 November 2012.
3. **Declarations of Interest**
To receive any Declarations of Interest from Members.
4. **Amendments to the Constitution - Part 4 (Executive Rules of Procedure), Part 5 (Council Rules of Procedure), Part 11 (Contract Rules of Procedure) and Part 13 Appendix A (Code of Conduct for Planning) (C2551)** 9 - 60
Purpose: To agree various changes to the Constitution as a result of the Access to Information Regulations 2012 and amendments to the contract rules of procedure.

Andy Day
Head of Strategic Support

West Berkshire Council is committed to equality of opportunity. We will treat everyone with respect, regardless of race, disability, gender, age, religion or sexual orientation.

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

GOVERNANCE AND AUDIT COMMITTEE

MINUTES OF THE MEETING HELD ON MONDAY, 10 SEPTEMBER 2012

Councillors Present: Peter Argyle (Substitute) (In place of Paul Bryant), Jeff Beck (Chairman), David Holtby, Tony Linden, Julian Swift-Hook (Vice-Chairman), Tony Vickers and Quentin Webb

Also Present: Lesley Flannigan (Finance Manager: Technical and Control), Joseph Holmes (Chief Accountant), Ian Priestley (Chief Internal Auditor), Moira Fraser (Democratic Services Manager), Andy Sayer and Grant Slessor (KPMG), Councillor David Rendel

Apologies for inability to attend the meeting: Councillor Paul Bryant

PART I

11. Minutes

The Minutes of the meeting held on 09 July 2012 were approved as a true and correct record and signed by the Chairman.

Councillor Tony Vickers commented that in relation to **Item 10 (To consider Returning to the Committee System)** he felt that it would have been useful to include some additional text in the minutes. There were two points that he would have liked to have seen included. The first was that whilst there was no requirement to refer the matter back to full Council this had been agreed based on the magnitude of the decision and the relatively low number of Members on the Governance and Audit Committee. The second reason for referring it back to full Council being the high number of new Members elected to the Council after the decision was made in 2010. These comments were noted, although it was agreed that the minutes did accurately reflect the decision taken at the meeting.

12. Declarations of Interest

There were no declarations of interest received.

13. KPMG Annual Governance Report (ISA 260+)

The Committee considered a report (Agenda Item 4) concerning the Council's external auditor's (KPMG) progress in auditing the financial statements and the opinion KPMG proposed to give to the Financial Statements.

Joseph Holmes introduced Grant Slessor and Andy Sayer from KPMG. In introducing the item, Officers noted that this item was intrinsically linked with the Council's Financial Statements 2011-12. In accordance with the Accounts and Audit Regulations, the Governance and Audit Committee were being asked to consider approving the Council's financial statements after hearing the external auditor's opinion. KPMG's audit had been undertaken between July and September of this year

The Chief Accountant reported that KPMG had concluded that their audit opinion was unqualified, which was good news for the Council. Andy Sayer highlighted some key issues set out in the report:

- KPMG anticipated issuing an unqualified audit opinion by the 30 September 2012;

GOVERNANCE AND AUDIT COMMITTEE - 10 SEPTEMBER 2012 - MINUTES

- Two areas still needed to be completed namely: confirmation from the RBWM Pension Fund actuary that the longevity scheme in the pension scheme assets was appropriate and the Council's Whole of Government Accounts submission had to be reviewed;
- Five audit adjustments had been identified, the details were set out in Appendix Three to the report, but these adjustments would not impact on the general fund;
- Two key risks (related to controls around finances and implementation of accounting changes associated with the new Code) were identified in the External Audit Plan 2011/12. KPMG was satisfied that in respect of both, the appropriate actions had been taken by the Council;
- They had noted an improvement in the quality of the accounts and supporting working papers;
- One recommendation had been issued in respect of the 2011/12 audit namely : 'the Council to seek to fully reconcile their asset register with underlying records in order to confirm all remaining assets exist';
- The auditors noted that the Council was undertaking an exercise to ensure that the new asset management system was fully reconciled to the Financial Asset Register by the end of the financial year;
- The declaration of independence and objectivity of the external auditors was set out in appendix four;
- The Chairman of the Governance and Audit Committee and the Head of Finance were required to sign off the management representation letter a draft copy of the letter, was attached as appendix five to the report.

Councillor Quentin Webb noted that, although the 2011/12 ISA 260 Report stated that there had been two recommendations in the 2010/11 report, on looking back he had noted a third recommendation namely 'The Council should develop a formal structured process for preparing this note to ensure that all relevant accounts are considered with regard to whether they could be financial instruments.' The external auditors responded that the financial instruments had been considered and therefore they were implicitly clear, but they would ensure that reference was made to this in their final report.

Members thanked KPMG for the clear report and thanked Officers and KPMG for the work they had carried out in undertaking the audit.

RESOLVED that the report be noted.

14. **West Berkshire Council Financial Statements 2011-12**

The Committee considered a report (Agenda Item 5) which provided Members with a final copy of the Council's Financial Statements. Joseph Holmes advised that the Governance and Audit Committee was being asked to approve the financial statements in accordance with CIPFAs IFRS Code, as well as International Accounting Standards. The accounts had been in the public domain since the end of June 2012. Should members be minded to sign off the accounts, they would be posted as final documents on the Council's website, along with the KPMG's opinion on the accounts.

Councillor Jeff Beck noted that there was a typographical error on page 71 of the report and asked that the word 'Authority' be replaced with 'Authority'.

RESOLVED that the Financial statements and KPMG's Governance Report be approved, subject to the amendment of the typographical error.

15. Amendments to Parts 9 and 10 of the Council's Constitution (C2459)

The Committee considered a report (Agenda Item 6) concerning changes to the Financial Rules of Procedure and Protocols, in light of legislation changes and a review by the Finance and Governance Group. Joseph Holmes in introducing the report, explained that no significant changes had been made to the Constitution. This was largely a tidying up exercise and Officers had attempted to ensure greater clarity in the text.

RESOLVED that the suggested changes to Parts 9 and 10 of the Constitution be referred to Full Council for approval.

16. Bribery Act 2010 (GA2534)

The Committee considered a report (Agenda Item 7) concerning a proposed Bribery Policy for the Council. Ian Priestley explained that the policy had been drafted to respond to the Bribery Act 2010. The Chief Internal Auditor noted that the risk of bribery at the Council was low, due to the effective governance arrangements that were already in place, the adoption of the anti fraud strategy and the existence of a whistle blowing policy.

Although the risk of bribery was low the penalties attached to the Act were significant and included unlimited fines for an organisation or up to ten years imprisonment.

Members welcomed the adoption of the policy. A number of minor amendments were proposed including:

- Page 165, paragraph 5.1 (8) delete the word 'and' at the end of the sentence;
- Page 168, paragraph 7.2(5) delete the word 'and' at the end of the sentence;
- Page 169, paragraph 10.2(1) delete the word 'and' at the end of the sentence;
- Page 169, paragraph 12.1 second sentence include the words 'and elected Members' after the word 'staff'; and
- Page 169 12.1 first sentence should be amended to say 'to refresh routinely' rather than 'to routinely refresh'.

Members noted that this document would need to be considered in conjunction with other documents, including the Members and Officers Code of Conduct references to Gifts and Hospitality and the Council's Contract Rules of Procedure. Members felt that it was important that the policy be interpreted in a pragmatic way. They felt that it would be useful to review the document in twelve months time, to ensure that it was fit for purpose. *(Note post meeting: This item has been added to the Forward Plan for September 2013).*

RESOLVED that the Policy be approved and it be reviewed in twelve months time.

17. Heads of Service Assurance Statements (GA2525)

The Committee considered a report (Agenda Item 8) which outlined the issues of concern highlighted by the Council's Heads of Service in their Annual Assurance Statements. The document would be used as evidence to support the Annual Governance Statement.

Ian Priestley explained that Heads of Service were asked to complete an Assurance Statement annually. The risks they identified were then considered by their Corporate Directors and Portfolio Holders. 'Red risks' were then included on a Service Risk Register (SRR). Risk Registers and Action Plans were reviewed by Heads of Service on a quarterly basis. The SRR were then presented to Corporate Board for consideration. The table set out in paragraph 5.2 of the report highlighted the 'red risks' that Corporate Board felt might have a strategic impact.

GOVERNANCE AND AUDIT COMMITTEE - 10 SEPTEMBER 2012 - MINUTES

A Risk Strategy Group had been set up to look at SRRs more closely.

Members noted that they did not have enough information to review the SRR and were also concerned that they did not have enough information about the mitigation measures that had been put in place to reduce the net scores.

RESOLVED that:

- **after reviewing the Service Risks considered by Corporate Board to be significant, the implications for the Annual Governance Statement be noted;**
- **the Risk Strategy Group be tasked with conducting a review of service risk registers.**

18. Annual Governance Statement - Statement in Support by the Section 151 Officer (GA2539)

The Committee considered a report (Agenda Item 9) which provided evidence and independent verification of governance matters, which might impact on the Annual Governance Statement from the viewpoint of the Section 151 Officer.

Overall, the s151 Officer's assessment was that all parts of the Council were acting in accordance with the budgetary and policy requirements in connection with the setting of the budget and were meeting financial administration standards as set out in legislation. There had been no formal reports required by the s151 Officer to Council under the relevant legislation. The KPMG report provided further evidence to support this view.

Councillor Tony Vickers raised some concerns in respect of drafting of some S106 agreements and the governance associated with oversight of them. It was noted that the Resource Management Working Group would be looking into specific instances and lessons learnt from the emerging issues,

RESOLVED that the report be noted.

19. Annual Governance Statement - Statement in Support by the Monitoring Officer (GA2540)

The Committee considered a report (Agenda Item 10) which provided evidence and independent verification of governance matters, which might impact on the Annual Governance Statement from the viewpoint of the Monitoring Officer.

Moira Fraser explained that the report set out the Monitoring Officer's view of the Council's governance arrangements. The Monitoring Officer had concluded that they were robust and effective. There had been no necessity to report formally to Council under Section 5 of the 1989 Act. Ethical matters were being managed by the Standards Committee.

Councillor David Holtby requested that the first sentence in paragraph 4.3 of the report be amended as follows: remove the words 'relatively static' and replace with 'low'.

RESOLVED that the report be noted.

20. Annual Governance Statement 2011/12 (GA2524)

The Committee considered a report (Agenda Item 11) concerning a review of the Annual Governance Statement (AGS). Ian Priestley noted that the AGS was underpinned by a number of documents included on this Agenda (the Head of Service Assurance Statements, Service Risk Registers, the Monitoring Officer's Annual Report and the S151

GOVERNANCE AND AUDIT COMMITTEE - 10 SEPTEMBER 2012 - MINUTES

Officer's Annual Report) as well as the Head of Internal Audit Annual report which had been considered at the previous meeting.

Service Resilience had been identified as a significant governance issue in 2010/11, and had been identified as an issue again in 2011/12. A new governance issue that had emerged in 2011/12 were challenges that had been made to the Council's decisions via the Judicial Review process.

Members thanked Officers for the concise summary and the good work that had been done.

RESOLVED that the Annual Governance Statement be approved.

(The meeting commenced at 6.00 pm and closed at 7.12 pm)

CHAIRMAN

Date of Signature

This page is intentionally left blank

DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

GOVERNANCE AND AUDIT COMMITTEE

MINUTES OF THE MEETING HELD ON THURSDAY, 8 NOVEMBER 2012

Councillors Present: Jeff Beck (Chairman), Paul Bryant, Tony Linden, Julian Swift-Hook (Vice-Chairman), Tony Vickers and Quentin Webb

Also Present: ,

Apologies for inability to attend the meeting: Councillor David Holtby

PART I

21. **Declarations of Interest**

There were no declarations of interest received.

22. **Approval of Councillor Absence (C2574)**

(Councillor Tony Linden arrived at 5.35pm)

The Committee considered a report (Agenda Item 3) concerning delegation to the Monitoring Officer, the ability to approve absences from attendance at meetings in certain circumstances of Members of the Council, by amending the Scheme of Delegation.

The Monitoring Officer reported that under section 85 of the Local Government Act 1972, if a Member was unable to attend meetings for a period of six consecutive months they would cease to be a Member. The Act did however make provision for the Council to authorise absence in certain circumstances. While the issue was covered in general, there was no process to address it in the Council's Constitution and therefore approval of absences would have to be agreed by Full Council.

Such an arrangement would be unwieldy and it was therefore proposed that the Council's Constitution be amended to delegate authority to the Monitoring Officer, in consultation with the Group Leaders, to approve absences in certain circumstances such as illness or extended periods of work abroad.

Due to a recent issue that had arisen, it was requested that urgent approval of the delegation be given by the Governance and Audit Committee, that the delegation be ratified by Full Council in December 2012 and that the Scheme of Delegation be amended accordingly.

In considering the item, Members were concerned that there was no 'end date' to the approval and considered that any approval for extended absence beyond the six month period specified in the Act should be limited to three months, with the ability of the Member to reapply in writing to the Monitoring Officer for a further three month period. No additional extensions should be allowed, as this would deprive the Community of representation.

Councillor Swift-Hook suggested that the criteria under which absence could be allowed should be limited to exceptional circumstances such as serious chronic or critical illness, or extended working commitments abroad or service in the Forces. Members agreed that

GOVERNANCE AND AUDIT COMMITTEE - 8 NOVEMBER 2012 - MINUTES

any illness ought to be regarded as serious and would depend on the evidence available at the time. Any application should be in writing, addressed to the Monitoring Officer.

Members also considered that in a situation where the Group Leaders disagreed after being consulted, and in order to assist the Monitoring Officer the matter be brought before a Special meeting of the Governance and Audit Committee to determine.

With the matters referred to above, Members supported the recommendation as set out in the report.

RESOLVED:

- 1. To agree the amendment to the Scheme of Delegation to allow the Monitoring Officer to approve applications in writing from absent Councillors in exceptional circumstances (such as serious illness, extended work commitments abroad or extended service in the Forces) subject to consultation with Group Leaders. Any applications for extended absence would be limited to two three month periods only and in the event of disagreement between the Group Leaders, the application would be determined by a Special Meeting of the Governance and Audit Committee.**
- 2. To recommend that Council ratifies and approves this arrangement, and the amendment to the Scheme of Delegation.**

(The meeting commenced at 5.30 pm and closed at 5.56 pm)

CHAIRMAN

Date of Signature

Title of Report:	Amendments to the Constitution - Part 4 (Executive Rules of Procedure), Part 5 (Council Rules of Procedure), Part 11 (Contract Rules of Procedure) and Part 13 Appendix A (Code of Conduct for Planning)
Report to be considered by:	Council
Date of Meeting:	13 December 2012
Forward Plan Ref:	C2551

Purpose of Report:

1. To consider changes to the Executive and Contract Rules of Procedure in light of legislation changes following a review by the Finance and Governance Group.
2. To propose an amendment to the Council's Rules of Procedure (Paragraph 4.13.7) which deals with substantive amendments to the Council's annual budget.
3. To propose an amendment to Part 13 Appendix A (Code of Conduct for Planning) to align the training requirements with those of the Licensing Committee.

Recommended Action:

1. To discuss the proposed and any additional revisions to Part 5 of the Constitution and to recommend the agreed amendments to full Council, via Management Board and Governance and Audit Committee for approval.
2. That the Council's Rules of Procedure be amended to require that any substantive amendments proposed to the Council's annual budget be submitted to the Council's Section 151 Officer at least 3 clear working days before the date of the Council meeting in March.
3. That the Council's Code of Conduct for Planning be amended to require all Members of Planning Committees should receive training before taking their seat on the Committee.
4. To discuss the proposed and any additional revisions to Part 11 of the Constitution and to

recommend the amendments to Council via Management Board and the Governance and Audit Committee.

5. The Procurement Board approves the Desktop Procurement Guide in consultation with the Head of Legal and Head of Finance.

Reason for decision to be taken:

To ensure that the Council has established a Constitution that is in accordance with statutory requirements / good practice and that there are processes in place ensuring the effective management and maintenance of the Constitution in accordance with good practice guidelines (e.g. CIPFA / SOLACE Code of practice for Corporate Governance)

To ensure that any substantive amendments proposed to the Council's annual budget are received by the Council's Section 151 Officer for confirmation that it complies with Financial Regulations and Statutory requirements.

Other options considered: None

Key background documentation:

The Local Government Act 2000 (Constitution) (England) Direction 2000
The Localism Act 2011
The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

The proposals will also help achieve the following Council Strategy principle:

CSP9 - Doing what's important well

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

To ensure that the constitution is up to date and accords with the relevant legislation

Member Details	
Name & Telephone No.:	Councillor Jeff Beck (Chairman of Governance and Audit Committee) – Tel (01635) 44770/ Councillor Alan Law - Tel (01491) 873614
E-mail Address:	jbeck@westberks.gov.uk/ alaw@westberks.gov.uk
Date Portfolio Member agreed report:	Discussed with Councillor Jeff Beck on 31 st October 2012

Contact Officer Details	
Name:	Andy Day/ Shiraz Sheikh
Job Title:	Head of Strategic Support/ Solicitor Corporate Services Team
Tel. No.:	01635 519459/ 01635 519431
E-mail Address:	aday@westberks.gov.uk/ssheikh@westberks.gov.uk

Implications

- Policy:** Will require Parts 4, 5, 11 and 13 of the Constitution to be amended and accords with the Council's policy of reviewing the Constitution
- Financial:** None – will be undertaken within existing resources.
- Personnel:** None
- Legal/Procurement:** Will include changes to the Constitution.
The amendments to Part 4 accord with the Local Government Act 2000
- Property:** None
- Risk Management:** None
- Equalities Impact Assessment:** Stage 1 EIA completed.

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input checked="" type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>
Report is to note only		<input type="checkbox"/>

Executive Summary

1. Introduction

- 1.1 Following an internal audit of the Management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to review the Council's Constitution on a regular basis. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution.
- 1.2 A timetable has now been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers have been involved in revising specific parts of the Constitution. This report proposes amendments to Parts 4, 5, 11 and 13 of the Constitution.

2. Proposals

- 2.1 That the amendments to Parts 4, 5, 11 and 13 of the Council's Constitution are approved in order to ensure that the Council has established a Constitution that is in accordance with statutory requirements / good practice and that there are processes in place ensuring the effective management and maintenance of the Constitution in accordance with good practice guidelines (e.g. CIPFA / SOLACE Code of Corporate Governance).

3. Equalities Impact Assessment Outcomes

- 3.1 EIA Stage 1 attached as Appendix A.

4. Conclusion

- 4.1 The report is a required update to consider amendments to the Executive and Contract Rules of Procedure in light of changes to legislation.
- 4.2 The amendment proposed to Paragraph 4.13.7 will provide greater certainty and clarity to matters arising from the budget setting arrangements for the Council.
- 4.3 The amendment proposed to paragraph 21 of Appendix A to part 13 of the Constitution (Code of Conduct for Planning) will assist with aligning the training requirements of Members of the Planning Committee with those of the Licensing Committee.

Executive Report

1. Introduction

- 1.1 The internal audit review of the Constitution made a number of recommendations to enhance the management of the Constitution including:
- (1) That the Finance and Governance Group should establish a process to review the content and application of the Constitution on an annual basis in accordance with the requirements of the Council's Local Code of Corporate Governance.
 - (2) That members of the Finance and Governance Group are allocated responsibility for maintaining specific Articles and Rules of the Constitution.
 - (3) That the Finance and Governance Group should monitor progress of proposed amendments to the Constitution to ensure that they are appropriately approved and published.
- 1.2 A timetable was established for the Finance and Governance Group to review individual sections of the Constitution and relevant Officers have been allocated responsibility for maintaining specific parts of the Constitution. Given the wide ranging nature of the Constitution a number of Officers have contributed to the review of each Part. This report proposes amendments to Parts 4, 5, 11 and 13 of the Constitution.
- 1.3 Members of the Planning Policy Task Group noted that there was an inconsistent approach in respect of training for Members of the Planning and the Licensing Committees and they therefore requested that the Planning Protocol attached as Appendix A to Part 13 of the Constitution be amended to reflect the approach taken by the Licensing Committee.
- 1.4 The attached Contract Rules of Procedure (Part 11) are made in accordance with the requirements under section 135 of the Local Government Act 1972. There are several amendments to Part 11 which are necessary to comply with current legislation, practices and procedures. The amendments also seek to make Part 11 more concise and as a result there has been reduction in content to 10 pages. This takes into account user feedback from Officers and Members.
- 1.5 The purpose of Part 11 is to set basic rules for procurement and should not be treated as a guide to Procurement within the Council. The process for procurement will be set out in a separate document. The Constitution sets out the rules governing contracts in accordance with the aforementioned Act. Part 11 sets out minimum requirements to be followed when procuring in accordance with relevant procurement legislation.
- 1.6 It is intended a Desktop Procurement Guide will be developed by the Procurement Board which will set out information and guidelines for procurement activity throughout the Council. This will also include various protocols and guidance that exists now which is in need of an updating.

2. Outline of the Changes

Part 4 – Council Rules of Procedure:

- 2.1 The Council's constitution and, in particular, the Council Rules of Procedure currently contain a paragraph (4.13.7 set out below) which deals with amendments which have financial implications.

“Amendments relating to in year reports or motions to Council which have financial implications should be the subject of discussions with and receive the approval of the Council's Section 151 Officer in advance of the meeting to ensure that the amendment does not compromise the Council's financial position.”

- 2.2 Although the above paragraph requires amendments to be approved by the Council's Section 151 Officer there is no timeline provided by which amendments have to be submitted. It is accepted that during the course of debate at the budget Council meeting that their may be minor amendments proposed on the night which do require the Section 151 Officer to approve at that time. This may require a short adjournment in the proceedings to seek advice and clarification.
- 2.3 However, it is suggested that to provide some clarity to Paragraph 4.13.7 any substantive amendments proposed to the annual budget should be submitted to the Council's Section 151 Officer at least three working days before the day of the Council meeting. This will enable the Section 151 Officer to scrutinise any proposals set out in the amendment and to provide a view on whether the amendment is sound or whether it compromises the Council's financial position.
- 2.4 It is therefore suggested that the Paragraph 4.13.7 be amended as follows:

“Amendments relating to in year reports or motions to Council which have financial implications should be the subject of discussions with and receive the approval of the Council's Section 151 Officer in advance of the meeting to ensure that the amendment does not compromise the Council's financial position. In relation to the budget meeting, any substantive amendments proposed to the budget should be submitted to the Council's Section 151 Officer for approval at least three working days before the meeting”.

Part 5 – Executive Rules of Procedure:

- 2.5 A definition of the key decisions has been inserted in Part 4 (it is contained in part 2 already) to aid decision making.
- 2.6 The section on the Strong Leader has been clarified in accordance with decisions made at the Council meeting at the time the process was introduced.
- 2.7 The section on petitions has been amended, as it will be for all sections relating to petitions, to signpost readers to the protocol in Part 13 to avoid duplication and in some instances disparity between the protocol and Parts 4, 5, 6 and 7 of the Constitution.
- 2.8 The section on decisions not subject to call- in has been clarified following a recent query about this section of the Constitution.

- 2.9 The sections pertaining to the Forward plan and Key Decisions has been amended in light of the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Part 11 – Contract Rules of Procedure:

- 2.10 Part 11 has been rewritten into a concise layout arranged over 14 short sections. The amendments cover what was previously included except for the changes outlined below and marked on the attached. Duplications have been removed which existed in previous versions and users will find that it flows better. The attached copy shows the track changes which have been made.

- 2.11 The main changes are as follows:

- (1) Lay out of the threshold is now arranged into a table format. No changes on the limits have been made. The reference to Protocol for Member Involvement has been taken out as this was an outdated document and member involvement in procurement which leads to a tender is now a matter of course. It is proposed that the Desktop Procurement Guide will cover and update guidance in this connection.
- (2) Lengthy authorisation process has been clarified to include: any contract must give effect to a decision or resolution of the Executive, an authorised member of the Executive or one of its committees or sub committees.
- (3) Tendering principles now include references to legal aspects which are necessary to avoid challenges as listed in clause 11.8.
- (4) The Council increasingly uses electronic process to place tenders and receive tender which is consistent with EU procurement rules. From 2014, it is proposed (under the new legislative proposals) that all tenders must be placed electronically, and must be received in the same format. The amended section 11.9 contains minimum requirements for member involvement in opening of all tenders whether electronically received or not. Emphasis on member involvement on both electronic and traditional tender opening has been re-stated.
- (5) The granting of exceptions has now been consolidated into one area under section 11.11 to avoid legal challenges to granting of exception to these rules. References to the Public Procurement Regulation and EU rules have now been clarified. References to the use of Purchasing Schemes which were not clear in the previous version are included.
- (6) Section 11.11.13 now includes the requirement for all exceptions to go through Procurement Board which includes Members. This reflects changes made corporately to oversee procurement activity and produce a procurement strategy for the Council.
- (7) A new section 11.12 on the use of purchasing schemes has been added to clarify what these are and where there are legally permitted to be used.

- (8) Process dealing with tenders on both local and EU threshold levels has been consolidated so that there is no longer unnecessary duplication in procedures.
- (9) In the Prevention of Corruption section (11.13) outdated terminology around prejudicial and other interests has been changed and been revised. The reference to the repealed legislation has been removed.
- (10) The section on engagement of consultants was misleading and often gave an incorrect impression as to what process is followed. This has been consolidated into the main tendering sections where engagement of a consultant for certain services has to be procured in the same way as any other services contract and is subject to the application of the procurement law unless it falls under the exceptions and derogations. It is proposed that detailed guidance is provided in the Desktop Procurement Guide on this topic.
- (11) The requirement for all purchases to be evidenced in writing (written contract) is dealt within the new section 11.14 and legislative references have been updated.
- (12) Generally references to the previous Procurement Unit have been removed to reflect the current structure.

Part 13 (Codes and Protocols), Appendix A (Code of Conduct for Planning):

2.12 It is suggested that paragraph 21 is amended as follows:

Delete –

“All members of any planning committee must receive training before taking their seat on committee. If introductory training is not undertaken then councillors may not be on any planning committee. Councillors should also undertake such updating training as may be recommended from time to time.”

Replace with –

“All Members of Planning Committees must receive training before taking their seat on the Committee. If introductory training is not undertaken then Councillors may not be able to serve on any Planning Committee. Councillors will also undertake such updating training as may be recommended from time to time. Failure to attend updating training will mean Councillors may not continue to sit on the Planning Committee.”

2.13 This mirrors the requirement for the Licensing Committee.

3. Conclusion

3.1 The report is a required update to consider amendments to the Council, Executive and Contract Rules of Procedure in light of changes to legislation.

3.2 The amendment proposed to Paragraph 4.13.7 will provide greater certainty and clarity to matters arising from the budget setting arrangements for the Council.

- 3.3 The amendment proposed to paragraph 21 of Appendix A to part 13 of the Constitution (Code of Conduct for Planning) will assist with aligning the training requirements of Members of the Planning Committee with those of the Licensing Committee.

Appendices

Appendix A – Equality Impact Assessment – Stage 1

Appendix B – Part 5 (Executive Rules of Procedure with changes tracked)

Appendix C – Part 11 (Contract Rules of Procedure with changes tracked)

Consultees

Local Stakeholders: N/a

Officers Consulted: Finance and Governance Group, Corporate Board

Trade Union: Not consulted

APPENDIX A

Equality Impact Assessment – Stage One

Name of item being assessed:	Amendments to Parts 4,5 and 11 of the Council's Constitution
Version and release date of item (if applicable):	
Owner of item being assessed:	Andy Day
Name of assessor:	Andy Day
Date of assessment:	19 October 2012

1. What are the main aims of the item?
The item is to approve the amendments to Parts 4, 5 and 11 of the Council's Constitution.

2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation)		
Group Affected	What might be the effect?	Information to support this.
Further comments relating to the item:		
There are not believed to be any implications affecting any groups with this item. The item is to discuss the proposed amendments to Parts 4, 5 and 11 of the Council's Constitution. This means that Officers making decisions will be required to act according to Council Policy already in place, and remain neutral when making a decision.		

3. Result (please tick by clicking on relevant box)	
<input type="checkbox"/>	High Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	Medium Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	Low Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input checked="" type="checkbox"/>	No Relevance - This does not need to undergo a Stage 2 Equality Impact Assessment

For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.

4. Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	
Stage Two not required:	x

Name: Andy Day

Date: 19 October 2012

This page is intentionally left blank

Part 5

Executive Rules of Procedure

Document Control

Document Ref:	WB/P&C/MF/2008-11	Date Created:	May 2007
Version:	3	Date Modified:	April 2012
Revision due			
Author:	Moirra Fraser – Democratic Services Manager		
Owning Service	Strategic Support		

Change History

Version	Date	Description	Change ID
1.1	10 Sept 2007	Amendment to paragraph 5.6.1	
2	22 Sept 2011	See range of amendments made at Full Council	
3	April 2012	Changes to whole document as a consequence of the Senior Management Review	
4	December 2012	Amendments following introduction of of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012	



Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:

<http://www.opsi.gov.uk/legislation/uk>

If you require this information in a different format, such as audio tape or in another language, please ask an English speaker to contact Moira Fraser on 01635 519045 who will be able to help.

Contents

5.1	How the Executive Operates.....	1	
5.1.1	Function and Composition of the Executive	1	
5.1.2	Appointment of Chairman and Vice-Chairman	1	
5.1.3	Who may make Executive Decisions.....	2	Deleted: 1
5.1.4	Delegation by the Executive Leader	2	Deleted: 1
5.1.5	Sub-Delegation of Executive Functions.....	2	
5.1.6	Decisions by Individual Portfolio Members of the Executive	3	Deleted: 2
5.2	The Council’s Scheme of Delegation and Executive Functions...3		
5.2.1	Scheme of Delegation	3	
5.2.2	Conflicts of Interest.....	3	
5.3	Call-In	4	Deleted: 3
5.3.1	Publication of Decisions	4	Deleted: 3
5.3.2	Decisions not Subject to Call-In	4	
5.3.3	Non-Implementation of Decisions	4	
5.3.4	Review of Decision	5	Deleted: 4
5.3.5	Procedure Following Call-In	5	
5.3.6	Review of Decision	5	
5.3.7	Referral Back to Executive	5	
5.4	The West Berkshire Council Forward Plan.....	6	Deleted: 5
5.4.1	Period of the Forward Plan.....	6	Deleted: 5
5.4.2	Contents of the Forward Plan	6	
5.4.3	Publication of the Forward Plan	7	Deleted: 6
5.4.4	Application of Rules to the Executive.....	7	
5.4.5	Procedure Before Taking Key Decisions.....	7	
5.4.6	General Exception – ‘Key Decision’	8	Deleted: 7
5.4.7	Special Urgency – ‘Key Decision’	8	
5.4.8	Report to Council – ‘Key Decision’.....	8	
5.4.9	Executive’s Report to Council	8	
5.4.10	Quarterly Reports on Special Urgency Decisions	9	Deleted: 8
5.4.11	Record of Decisions	9	
5.4.12	Executive Meetings relating to matters which are not ‘Key Decisions’	9	

5.5	Order of Business	9	
5.5.1	Ordinary Meetings	9	
5.5.2	Order of Business - Ordinary Meetings	9	
5.5.3	Extraordinary Meetings	10	
5.5.4	Order of Business - Extraordinary Meetings	10	
5.5.5	Variation.....	10	
5.6	Meetings of the Executive	10	
5.6.1	Frequency of Meetings of the Executive	10	
5.6.2	Adjustment to Dates	10	
5.6.3	Electronic Communication Devices	10	
5.6.4	Quorum	10	
5.6.5	Continuation of Meeting	11	
5.6.6	Executive Agenda.....	11	
5.6.7	Presiding over Executive Meetings.....	11	
5.6.8	Substitutes	11	
5.6.9	Members’ Attendance at Meetings of the Executive.....	11	
5.6.10	Who can put Items on the Executive Agenda	11	Deleted: 12
5.7	Executive Minutes	12	
5.7.1	Approval.....	12	
5.7.2	Accuracy	12	
5.7.3	Signing Minutes	12	
5.8	Petitions	12	
5.8.1	Scope of Petitions.....	12	
5.8.2	Inspection of Petitions	12	Deleted: 13
5.8.3	Notice of Petitions.....	12	Deleted: 13
5.8.4	Presentation of Petitions by Members of Council	12	Deleted: 13
5.8.5	Presentation of Petitions by Members of the Public	13	
5.8.6	Petitions Received Outside of the Council’s Meetings.....	13	Deleted: 14
5.9	Motions	13	Deleted: 14
5.9.1	Scope of Motion.....	13	Deleted: 14
5.9.2	Submission of Motion	13	Deleted: 14
5.9.3	Consideration of Motion	13	Deleted: 14
5.9.4	Motions which may be Moved without Notice	13	Deleted: 14

5.9.5	Motions on Expenditure or Revenue.....	<u>14</u>	Deleted: 15
5.10	Suspension, Variation and Revocation of Rules of Procedure ..	<u>14</u>	Deleted: 15
5.10.1	Suspension of Rules of Procedure	<u>14</u>	Deleted: 15
5.10.2	Variation/Revocation of Rules of Procedure.....	<u>14</u>	Deleted: 15
5.11	Procedure for Reports at Executive Meetings	<u>14</u>	Deleted: 15
5.11.1	Executive Report	<u>14</u>	Deleted: 16
5.11.2	Confidentiality and Non-Disclosure of Reports.....	<u>14</u>	Deleted: 16
5.12	Questions.....	<u>15</u>	Deleted: 16
5.12.1	Public Written Questions	<u>15</u>	Deleted: 16
5.12.2	Members' Written Questions	<u>15</u>	Deleted: 17
5.12.3	Scope of Questions	<u>16</u>	Deleted: 17
5.12.4	Written Questions concerning the Thames Valley Police Authority (TVPA) and Royal Berkshire Fire and Rescue Service (RBFRS)	<u>16</u>	Deleted: 17
5.12.5	Member and Public Written Questions – Procedure at Executive.....	<u>16</u>	Deleted: 17
5.12.6	Answers to Questions.....	<u>16</u>	Deleted: 17
5.12.7	Supplementary Questions	<u>16</u>	Deleted: 18
5.12.8	Time Limit on Questions.....	<u>16</u>	Deleted: 18
5.12.9	Multiple Member and Public Questions	<u>17</u>	Deleted: 18
5.12.10	Order of Questions	<u>17</u>	Deleted: 18
5.12.11	Absence of Questioner.....	<u>17</u>	Deleted: 18
5.13	Rules of Debate	<u>17</u>	Deleted: 18
5.13.1	Seconding	<u>17</u>	Deleted: 18
5.13.2	Writing	<u>17</u>	Deleted: 18
5.13.3	Speech content.....	<u>17</u>	Deleted: 18
5.13.4	Speech length.....	<u>17</u>	Deleted: 18
5.13.5	Amendments.....	<u>17</u>	Deleted: 19
5.14	Behaviour of Members	<u>18</u>	Deleted: 19
5.14.1	Disorderly Conduct	<u>18</u>	Deleted: 19
5.14.2	Suspension of Sitting.....	<u>18</u>	Deleted: 19
5.15	Rescinding an Earlier Resolution	<u>18</u>	Deleted: 19
5.15.1	Six Months Rule.....	<u>18</u>	Deleted: 19

5.15.2	Rejected Motion.....	18	Deleted: 19
5.15.3	Executive Decision	18	Deleted: 19
5.16	Voting.....	18	Deleted: 19
5.16.1	Method of Voting	18	Deleted: 19
5.16.2	Chairman’s Casting Vote	18	Deleted: 20
5.16.3	Recording of Votes.....	18	Deleted: 20
5.16.4	Appointments to Outside Bodies	19	Deleted: 20
5.17	Press and Public	19	Deleted: 20
5.17.1	Admission	19	Deleted: 20
5.17.2	Exclusion of Employee	19	Deleted: 20
5.17.3	Removal.....	19	Deleted: 20
5.17.4	Speaking	19	Deleted: 21
5.17.5	Televising and Sound Recording of Meeting.....	19	Deleted: 21

Appendix A

Code of Practice relating to Televising and Sound Recording Meetings	22
--	----

5.1 How the Executive Operates

5.1.1 Function and Composition of the Executive

The Executive is the part of the Council which is responsible for making all 'key decisions' within the approved Budget and Policy Framework. Key Decisions are defined by the Government (Regulation 8 of the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2001) as:

- (i) Those which result in the Local Authority incurring expenditure which is, or the making of savings which are, significant having regard to the Local Authority's budget for the service or function to which the decision is related.
- (ii) Those which are significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Local Authority.

The Executive has to make decisions which are in accordance with the Council's overall policies and budget. If the Executive wishes to make a decision outside the Budget and Policy Framework (Part 9 (Budget and Policy Framework Rules of Procedure) refers), this must be referred to the Council as a whole to decide.

Deleted: ¶

5.1.2 Election of the Strong Leader

The Executive will consist of an Executive Leader, appointed under the Stronger Leader and Cabinet Model, who shall be a Member elected for a four year period (or the remaining period until an election) at the Annual Meeting of the Council following local elections.

The Strong Executive Leader will hold office until:

- they resign from the office; or
- they are suspended from being a Member under Part III of the Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007)
- they are no longer a Member; or
- they are removed from office by resolution of the Council.

5.1.3 Appointment of the Executive

The Executive Leader will appoint the Executive of at least two but no more than nine Members at the annual Council meeting each year.

The Executive cannot include the Chairman or Vice-Chairman of the Council and there will be no substitutes or co-optees for Executive Members.

Members of the Executive cannot be Members of the Council's Overview and Scrutiny Management Commission but may be Members of Task Groups.

Deleted: then a

Deleted: a Cabinet

Deleted: .

5.1.4 Appointment of the Deputy Leader

The Executive Leader will chair the Executive and will appoint a Deputy Leader to act as Vice-Chairman in their absence. The Deputy Leader is

Deleted: of Chairman and Vice-Chairman

Deleted: April

appointed by the Leader and ceases to be Deputy Leader when the Leader ceases to be Leader

5.1.5 Who may make Executive Decisions

The arrangements for the discharge of Executive functions are set out in the Executive arrangements adopted by the Council. The Executive Leader can provide for Executive functions to be discharged by:

- the Executive as a whole;
- a Committee of the Executive;
- an individual Member of the Executive;
- an Officer;
- joint arrangements; or
- another local authority.

5.1.6 Delegation by the Executive Leader

At the Annual Meeting of the Council, the Executive Leader will present to the Council a written record of delegations they have made for inclusion in Part 3 of this Constitution. The document presented by the Executive Leader will contain the following information about Executive functions in relation to the coming year:

- The names, addresses and wards of the people appointed to the Executive by the Executive Leader.
- The extent of any authority delegated to Executive Members individually, including details of the limitation on their authority.
- The terms of reference and constitution of such Executive Committees as the Executive Leader appoints and the names of Executive Members appointed to them.
- The nature and extent of any delegation of Executive functions to any other authority or any joint arrangements and the names of those Executive Members appointed to any Joint Committee for the coming year.
- The nature and extent of any delegation to Officers with details of any limitation on that delegation, and the title of the Officer to whom the delegation is made.

5.1.7 Sub-Delegation of Executive Functions

Where the Executive, a Committee of the Executive or an individual Member of the Executive is responsible for an Executive function, they may delegate further to a joint arrangement or an Officer.

Unless the Council directs otherwise, if the Executive Leader delegates functions to the Executive, then the Executive may delegate further to a Committee of the Executive or to an Officer.

Unless the Executive Leader directs otherwise, a Committee of the Executive to whom functions have been delegated by the Executive Leader may delegate further to an Officer.

Even where Executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

The Chief Executive will maintain a written record of delegations made by the Executive Leader, or an Executive Member or Committee.

5.1.8 Decisions by Individual Portfolio Members of the Executive

Decisions by Individual Portfolio Holders will be made in accordance with Appendix B (Protocol for Decision – Making by Individual Executive Members) of Part 13 (Codes and Protocols) of this Constitution.

5.2 The Council's Scheme of Delegation and Executive Functions

5.2.1 Scheme of Delegation

The Council's Scheme of Delegation will be dealt with as follows:

- The Council will adopt the Scheme of Delegation and this will include the details required in Article 6 and set out in Part 3 of the Constitution relating to responsibility for functions. Subject to (b) below, this may only be amended by the Council.
- The Executive Leader may amend the Scheme of Delegation in respect to Executive functions at any time by giving written notice to the Chief Executive and to the person, body or Committee concerned. The notice must set out the extent of the amendment, and whether it entails the addition or withdrawal of delegation from any person, body, Committee or the Executive as a whole. The notice is effective when it is received by the Chief Executive. The Chief Executive will present a report to the next ordinary meeting of the Council setting out the changes made by the Executive Leader, and will produce a revised statement of delegation arrangements for inclusion in Part 3 of this Constitution.
- Where the Executive Leader seeks to withdraw delegation from a Committee, notice will be deemed to be served on that Committee when it has been served on its Chairman.

5.2.2 Conflicts of Interest

Conflicts of interest will be dealt with as follows:

- Where the Executive Leader has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members ([appendix H](#)) in Part 13 ([Codes and Protocols](#)) of this Constitution.
- If every Member of the Executive has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct ([appendix H](#)) for Members in Part 13 ([Codes and Protocols](#)) of this Constitution.
- If the exercise of an Executive function has been delegated to a Committee of the Executive, an individual Member 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

Deleted: Where an individual Member of the Executive receives a report which they intend to take into account in making any decision, they will not make the decision until at least five clear working days after receipt of that report. ¶ Any report prepared for an individual decision-maker will be circulated to all Members of the Council in accordance with the approved protocol, subject to the exceptions referred to in Rule 5.6.6 below (Executive Agenda). The report will also be made available to the public subject to any legal restrictions and the Rules outlined in the Constitution. ¶ Decisions taken by individual Executive Members will be published by the Head of Strategic Support within three clear working days of the decision being taken. Decisions will generally be published the day after the meeting, but no later than three days after the meeting. In publishing relevant decisions the Head of Strategic Support will prepare a record of the decision, a statement of the reason for it and any alternative options considered and rejected. The provision of Rule 8.8 Part 8 of the Access to Information Procedural Rules (Access to Minutes, etc., after the Meeting) and Rule 8.9 (Background Papers) 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. ¶

Deleted: April

for Members ([appendix H](#)) in Part 13 ([Codes and protocols](#)) of this Constitution or in relation to decisions made by Individual Members to the Individual Decision Making Protocol (as set out in Part 13 of the Constitution).

5.3 Call-In

5.3.1 Publication of Decisions

The Head of Strategic Support will publish all decisions of the Executive, Committees of the Executive, individual Members of the Executive and 'key decisions' taken under delegated powers of Officers ("Executive decisions") to all Members of Council normally within three clear working days of the decision. Decisions will generally be published the day after the meeting, but no later than three days after the meeting. If the body taking the decision reasonably considers that, for reasons of expediency which shall be stated in the notice of decision, a decision should not be subject to call-in procedures, the procedure outlined in Rule 5.3.5 ([Procedure Following Call-In](#)) shall not apply to that decision.

Deleted: p

5.3.2 Decisions not Subject to Call-In

The call-in procedure as set out below shall not apply where the decision taken by the Executive has to be implemented before the expiry of the call-in period. This will only be the case if one of the following applies:

- The item is due to be referred to Council for final approval, e.g. budget.
- If there were a delay in implementing the decision, this would have serious financial implications for the Council or could compromise the Council's position.
- The item has been considered by the Overview and Scrutiny Management Commission, or has been the subject of a review undertaken by another body e.g. Task Group, within the preceding six months.
- The item is deemed an Urgent Key Decision as set out in Rule 5.4.7 (Special Urgency – Key Decision).

Reports that do not require a decision and are for information only will not be subject to 'call-in'.

[Any matter which has been the subject of a call-in request may not be the subject of a further call-in request.](#)

The reason why the item is "not subject to call-in" must be specified in the report. In the event of a dispute over the reason why the item is "not subject to call-in" the Monitoring Officer or the Section 151 Officer will be the final arbiter.

Deleted: ¶

5.3.3 Non-Implementation of Decisions

Except as outlined in Rule 5.3.1 (Publication of Decisions) above, or an item that is not subject to call-in (see Rule 5.3.2 – Decisions not subject to Call-In), Executive decisions shall not be capable of implementation until either:

- (a) the time for a call-in request has expired without such a request being made; or
- (b) the procedure in the following Rules has been followed.

5.3.4 Review of Decision

Any five Members of Council (excluding any Members involved in making the original decision) may by 5pm on the fifth clear working day following the publication of the decision give notice in writing ~~(including via e-mail)~~ to the Head of Strategic Support requesting that the decision be reviewed by the Overview and Scrutiny Management Commission. The notice shall give reasons for the request ('call-in request'), together with a proposal for an alternative course of action and states whether or not those Members believe that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget.

Deleted: or by fax or

5.3.5 Procedure Following Call-In

When a call-in request is duly made, the Head of Strategic Support shall inform the Executive Leader and the Chairman of the Overview and Scrutiny Management Commission, and shall convene a special meeting of the Commission as soon as reasonably practicable for the purpose of reviewing the decision unless the matter can conveniently be reviewed at the next scheduled meeting of the Commission.

If the request for a call-in states that the reason for it being called-in is that the decision is outside the budget or policy framework it will be referred to the Monitoring or Section 151 Officer who shall decide if this is the case.

5.3.6 Review of Decision

Any Member of Council who has signed a call-in request may attend the meeting of the Overview and Scrutiny Management Commission when the decision is reviewed and may speak to that item of business. If a Member of Council wishes to speak to a called-in item, but has not signed the call-in request, they can request the permission of the Chairman of the Commission to speak to the item, giving 24 hours notice in advance of the meeting in question.

The Overview and Scrutiny Management Commission cannot overturn the decision which it is reviewing but may either concur with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration. If the Commission is of the opinion, having taken advice from the Council's Section 151 Officer ~~or Monitoring Officer~~ that a decision is outside the Budget and Policy Framework approved by the Council, the Commission may refer the decision to the Council. The Council may concur with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration.

5.3.7 Referral Back to Executive

The Overview and Scrutiny Management Commission will produce a report with its findings to the next meeting of the Executive (i.e. the meeting following the call-in request) unless there are exceptional circumstances why this cannot be achieved. In these circumstances the Chairman of the Commission and the Leader of the Council will agree a revised timetable. The report will either confirm the original decision or

Deleted: April

propose amendments to it in any way it thinks fit and shall give reasons for its final decision. If the Overview and Scrutiny Management Commission upholds the Executive decision, that decision shall take immediate effect (Rule 5.3.6 [Review of Decision] above refers).

Any matter which has been the subject of a call-in request may not be the subject of a further call-in request.

5.4 The West Berkshire Council Forward Plan

5.4.1 Period of the Forward Plan

5.4.2 A Forward Plan will be prepared by the Head of Strategic Support to cover a period of four months. The introduction of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 includes a requirement for a notice of any key decisions to be published 28 clear working days before the decision is made unless an urgent decision is required (see paragraph 5.4.7 (Special Urgency – ‘Key Decision’))

Deleted: Executive Leader

[Note: Clear working days do not include day of notice despatch, day of meeting, weekends or bank holidays]

5.4.3 Contents of the Forward Plan

The Forward Plan will contain matters which the Executive Leader has reason to believe will be the subject of a ‘key decision’ to be taken by the Executive, a Committee of the Executive, individual Members of the Executive or under joint arrangements in the course of the discharge of an Executive function during the period covered by the Plan. The Forward Plan will also contain details of intended review activity by the Overview and Scrutiny Management Commission or another body e.g. Task Group associated with the Overview and Scrutiny Management Commission. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 are only applicable to Executive Decisions.

Deleted: , beginning with the first day of any month. The Forward Plan will be prepared on a monthly basis and any subsequent Plan will cover a period beginning with the first day of the second month covered in the preceding plan. The Plan will be published at least fourteen days prior to it coming into force.

It will describe the following particulars insofar as the information is available, applicable or might reasonably be obtained:

Deleted: ¶

- the matter in respect of which a decision is to be made;
- where the decision taken is by an individual, his/her name and title, if any, and where the decision-taker is a body, its name and details of membership;
- the date on which, or the period within which, the decision will be taken;
- the identity of the principal groups whom the decision-taker proposes to consult before taking the decision;
- the means by which any such consultation is proposed to be undertaken;
- The steps any person might take who wishes to make representations to the Executive or decision-taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and

- a list of the documents submitted to the decision-taker for consideration in relation to the matter.

5.4.4 Publication of the Forward Plan

The Head of Strategic Support will publish once a year a notice in at least one newspaper circulating in the area, stating:

- that 'key decisions' are to be taken on behalf of the Council;
- that a Forward Plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- that the Plan will contain details of the key decisions to be made for the four month period following its publication;
- that the Plan will be available for inspection, free of charge, at the Council's offices during normal office hours and will also be available on the Council's website;
- the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available;
- that other documents may be submitted to decision-takers;
- the procedure for requesting details of documents (if any) as they become available; and
- the dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a Forward Plan and confidential information cannot be included.

5.4.5 Application of Rules to the Executive

If the Executive or its Committees (if appointed) meet to discuss a 'key decision' to be taken collectively, with an Officer (other than a political assistant) present, within twenty eight days of the date according to the Forward Plan by which it is to be decided, then it must also comply with Rules 8.1 to 8.3 inclusive (Part 8 of the Constitution), unless Rule 5.4.7 (Special Urgency) below applies.

5.4.6 Procedure Before Taking Key Decisions

Subject to Rule 5.4.7 (Special Urgency) below, a 'key decision' may not be taken unless:

- a notice (called here a Forward Plan) has been published in connection with the matter in question;
- at least twenty eight clear working days have elapsed since the matter has first been published on the Forward Plan; and
- where the decision is to be taken at a meeting of the Executive or its Committees, notice of the meeting has been given in accordance with Rule 5.6.6 (Executive Agenda).

Deleted: 6 (General Exception) or Rule 5.4.7

Deleted: y

Deleted: A 'key decision' is as described in Rule 2.4.3 (b) of Article 4 of this Constitution.

Deleted: 6

Deleted: (General Exception) and Rule 5.4.7

Deleted: three

Deleted: cation

Deleted: f

Deleted: April

5.4.7 Special Urgency – ‘Key Decision’

An urgent item of business, which is deemed to be a ‘key decision’, that needs to be determined before the next scheduled meeting of the Executive and which cannot be dealt with under the existing Scheme of Delegation to Officers may be considered if the conditions set out below are followed.

The ‘key decision’ can only be taken if:

- a. it is impracticable to give the full notice, provided that the authority gives at least five days’ clear notice to all members of the Overview and Scrutiny Management Commission, which can then call in the decision to check that it was genuinely urgent; or
- b. it is so urgent there is not even time to give five clear days’ notice, but the Chairman of the Overview and Scrutiny Management Commission has agreed that the key decision is urgent and cannot reasonably be deferred.

Where such a decision is taken by the Executive, it must be taken in public, except for items that are deemed Exempt Information as set out in Rule 8.10.3 (Part 8 of the Constitution).

5.4.8 Report to Council – ‘Key Decision’

The Overview and Scrutiny Management Commission can require a report if it thinks that a ‘key decision’ has been taken which was not:

- included in the Forward Plan; or
- the subject of the general exception procedure; or
- the subject of an agreement with the Overview and Scrutiny Management Commission Chairman, or the Chairman/Vice-Chairman of the Council.

The Overview and Scrutiny Management Commission may then require the Executive to submit a report to the Council within such reasonable time as the Commission specifies. The power to require a report rests with the Commission, but is also delegated to the Head of Strategic Support, who shall require such a report on behalf of the Commission when so requested by the Chairman or any five Members. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Management Commission.

5.4.9 Executive’s Report to Council

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven clear working 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 Executive Leader is of the opinion that it was not a ‘key decision’ the reasons for that opinion.

Deleted: <#>-General Exception – ‘Key Decision’¶

If a matter which is likely to be a ‘key decision’ has not been included in the Forward Plan, then subject to Rule 5.4.7 (Special Urgency) below, the decision may still be taken if:¶

(a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;¶

(b) the Head of Strategic Support has informed the Chairman of the Overview and Scrutiny Management Commission, or if there is no such person, each Member of the Commission in writing, by notice, of the matter on which the decision is to be made;¶

(c) the Head of Strategic Support has made copies of that notice available to the public at the offices of the Council; and¶

(d) at least three clear working days have elapsed since the Head of Strategic Support complied with (a) and (b).¶

Where such a decision is taken collectively, it must be taken in public except for items deemed exempt information as set out in Rule 8.10.3 (Part 8 of the Constitution).¶

Deleted: (a) .

Deleted: agreement is obtained from the Chairman of the Overview and Scrutiny Management Commission, that the taking of the decision cannot be reasonably deferred; or¶

(b) in the absence of the Chairman of the Overview and Scrutiny Management Commission, agreement may be obtained from the Chairman of the Council; or in his/her absence, the Vice-Chairman

Deleted: ¶

5.4.10 Quarterly Reports on Special Urgency Decisions

In any event the Executive Leader will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 5.4.7 (Special Urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

5.4.11 Record of Decisions

After any meeting of the Executive or any of its Committees, whether held in public or private, the Head of Strategic Support, or, where no Officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable, usually within 3 working days. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

5.4.12 Executive Meetings relating to matters which are not 'Key Decisions'

The Executive will decide whether meetings relating to matters which are not 'key decisions' will be held in public or private.

5.5 Order of Business

5.5.1 Ordinary Meetings

Meetings for the transaction of general business shall be held on such days as the Council decides and as specified in the timetable of meetings.

5.5.2 Order of Business - Ordinary Meetings

The order of business at an ordinary meeting of the Executive shall be to:

- (a) elect a person to preside if the Executive Leader or Deputy Leader are not present;
- (b) receive apologies for inability to attend the meeting;
- (c) approve the Minutes of the last meeting;
- (d) receive any declarations of interest from Members;
- (e) receive written questions from and provide answers to the public in relation to matters relating to the business of the Council;
- (f) receive petitions;
- (g) provide a response to petitions previously received;
- (h) deal with matters referred to the Executive (whether by the Overview and Scrutiny Management Commission or by the Council) for reconsideration by the Executive in accordance with the provisions contained in the Overview and Scrutiny Rules of Procedure set out in Part 6 of this Constitution, or the Budget and Policy Framework Rules of Procedure as set out in Part 9 of this Constitution;
- (i) deal with 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 Rules of Procedure as set out in Part 8 of this Constitution;

Deleted: April

- (j) consider reports from the Overview and Scrutiny Management Commission;
- (k) receive written questions from and provide answers to Members in relation to matters relating to the business of the Council prior to Part II matters;
- (l) exclude members of the public and the press and consider any Part II or confidential matters.

5.5.3 Extraordinary Meetings

Extraordinary meetings of the Executive may be called at any time by the Executive Leader, or in his/her absence, the Deputy Leader, or by the Head of Strategic Support if they consider it necessary or appropriate.

5.5.4 Order of Business - Extraordinary Meetings

The order of business at an extraordinary meeting shall be to:

- (a) elect a person to preside if the Executive Leader or Deputy Leader is not present;
- (b) receive apologies for inability to attend the meeting;
- (c) receive any declarations of interest from Members;
- (d) consider any business specified in the Summons to the meeting.

[Note: No Public or Member Questions, Petitions or Motions may be dealt with at an Extraordinary Meeting.]

5.5.5 Variation

With the exception of business specified in (a)–(d) of Rule 5.5.2 (Order of Business – Ordinary Meetings) and (a)–(c) of Rule 5.5.4 (Order of Business – Extraordinary Meetings) above, the order of business may be varied at the discretion of the Executive Leader.

5.6 Meetings of the Executive

5.6.1 Frequency of Meetings of the Executive

The Executive will normally meet on a six-weekly basis at times to be agreed by the Executive Leader. The Executive shall meet at the Council's main offices or another location to be decided by the Executive Leader.

5.6.2 Adjustment to Dates

The Executive Leader or Deputy Leader, in consultation with the Head of Strategic Support, may make any adjustments to the date, time and place of meetings considered necessary or desirable.

5.6.3 Electronic Communication Devices

There shall be a ban on the inappropriate and unauthorised use of electronic communication devices at all meetings.

5.6.4 Quorum

The quorum for a meeting of the Executive, or a Committee of it, shall be four Members of the Executive.

5.6.5 Continuation of Meeting

Meetings of the Executive should not normally continue past 10.00pm. If however the Executive Leader believes that business could be concluded by 10.30pm, a Motion under Rule 5.9.4 (Motions which may be Moved without Notice) must be moved and supported by a majority of those Executive Members present. All meetings will conclude by 10.30pm at the latest.

5.6.6 Executive Agenda

The Head of Strategic Support will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules of Procedure (Part 8). The Head of Strategic Support will provide to every Member of the Executive an agenda at least five clear working days before a meeting unless the meeting is convened at shorter notice as a matter of urgency. The agenda will give the date, time and place of the meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

[Note: Clear working days do not include day of agenda despatch or day of meeting.]

The agenda and reports for meetings of the Executive will also be circulated electronically to all Members of the Council unless:

- any individual Member indicates that they do not wish to receive specified papers; or
- a report contains information or advice which the Council is unable to supply to Members not involved in the making of a decision because of any statutory provision or the terms of any agreement.

5.6.7 Presiding over Executive Meetings

If the Executive Leader is present they will preside. In their absence, then the Deputy Leader will preside. If neither the Executive Leader nor Deputy Leader are present then a person appointed to do so by the Executive Leader, shall preside. In the latter case, the Executive Leader will notify the Head of Strategic Support before the meeting about who will preside.

5.6.8 Substitutes

There will be no substitutes or co-optees for Executive Members.

5.6.9 Members' Attendance at Meetings of the Executive

Members of the Council who are not Members of the Executive may attend meetings of the Executive and any Committee of the Executive. There is a general assumption that they will have the right to speak and be allowed to join in debates on any item on the agenda but this will be subject to the discretion of the Member presiding over the meeting. Only Members of the Executive may vote on items on the agenda.

5.6.10 Who can put Items on the Executive Agenda

The Executive Leader may put on the agenda any item which he/she wishes whether or not authority has been delegated to the Executive, a Committee or any Member or Officer in respect of that item.

Deleted: April

The Council, the Overview and Scrutiny Management Commission or any other Committee of the Council may place an item on the agenda of a meeting of the Executive.

Items may also be placed on the agenda of the Executive by the Chief Executive, Corporate Board and any Statutory Officer. Reports of Statutory Officers may not be deferred if, in the opinion of the Officer concerned, it is necessary for the report to be considered at the next meeting.

The Executive Leader and the Chief Executive will agree the agenda for each meeting of the Executive to ensure that the volume of business is manageable and appropriate information is available about any item placed on the agenda.

5.7 Executive Minutes

5.7.1 Approval

The Executive Leader shall move “that the Minutes of the meeting of the Executive held on (date) be signed as a correct record”.

5.7.2 Accuracy

Only the accuracy of the Minutes may be questioned and an amendment put forward to propose a change of wording. As soon as any such amendment has been agreed, the Executive Leader will sign the Minutes.

[Note: Any amendments to the Minutes should be set out in the Minutes of the subsequent meeting and not marked on the original set of Minutes under discussion. However, if the Minutes are amended they should be annotated with the words "These Minutes have been amended".]

5.7.3 Signing Minutes

Minutes shall be submitted to and signed at the next meeting of the Executive which is not an extraordinary meeting.

5.8 Petitions

The Council welcomes petitions and recognised that they are one way in which people can let the Council know about their concerns. Petitions will be dealt with in accordance with Appendix C to Part 13 of the Constitution (Procedure Rules for Dealing with Representations).

5.8.1 Notice of Petitions

Where notice of a petition is given to the Head of Strategic Support by 10.00am seven clear working days before the meeting details will be included in the summons or agenda.

5.8.2 Presentation of Petitions by Members of Council

Members of Council who receive a petition from a member of the public can either:

- (a) present it at the appropriate meeting; or
- (b) pass it to the appropriate Officer.

The Executive Leader will advise the Councillor presenting the petition how it will be dealt with. However, if the petition relates to a matter on the

Deleted: <#>Scope of Petitions¶

Deleted: . Petitions must relate to Council business or to matters of concern to the District of West Berkshire and fall within the terms of the body to which they are presented. Petitions will be dealt with in accordance with Appendix C to Part 13 of the Constitution (Procedure Rules for Dealing with Representations). Petitions may only be presented at one forum of the Council which will include petitions handed directly to the appropriate Council Officer.¶ Inspection of Petitions¶ Paper petitions received by the Council will be available for public inspection during the Council's opening hours from Strategic Support Service Unit. Copies of the nature of paper petitions submitted at Executive meetings will also be placed on the Council's website. The Council's website also hosts ePetitions available for public inspection

Deleted: .

agenda for the meeting of the Executive at which it is presented it shall be dealt with at that meeting.

Members of the Council may present petitions directly to the Executive, a Committee or Sub-Committee and speak for up to five minutes on that petition. No further debate shall take place unless the relevant body receives a report on the matter.

Petitions relating to licensing or planning applications will normally be received by Officers during the Licensing or Planning consultation process.

5.9 Motions

5.9.1 Scope of Motion

Motions must relate to matters of concern to the District of West Berkshire.

5.9.2 Submission of Motion

At any meeting of the Executive, except an Extraordinary Meeting that does not appear in the timetable of meetings, a Notice of Motion may be submitted under this Rule for consideration.

5.9.3 Consideration of Motion

The Executive can debate the Motion at the meeting, or if deemed appropriate, refer the Motion to Officers for a report to be considered at a subsequent meeting.

5.9.4 Motions which may be Moved without Notice

The following Motions may be moved without notice:

- To appoint a Chairman of the meeting if the Executive Leader or Deputy Leader are absent.
- Motions relating to:
 - accuracy of Minutes;
 - closure or adjournment of the meeting;
 - order of or next business.
- To refer any matter to the Council or a Committee, or a Statutory Officer.
- To receive minutes and reports and adopt recommendations of Committees and Officers and any consequential Motions.
- To withdraw a Motion or amendment with leave of the Executive Leader.
- To amend a Motion.
- To extend the time limit for speeches.
- To allow the continuation of a meeting past 10.00pm.
- To suspend a Procedure Rule in accordance with Rule 5.10.1 (Suspension of Rules of Procedure) below.
- To exclude the press and public in accordance with the statutory provisions.

Deleted: <#>Presentation of Petitions by Members of the Public¶

Petitions will be dealt with in accordance with Appendix C to Part 13 of the Constitution (Procedure Rules for Dealing with Representations). ¶ Members of the public may present petitions directly to the Executive and may speak for up to five minutes on that petition where notice has been given as outlined in 5.8.3. No further debate shall take place unless the relevant body receives a report on the matter. ¶ The petitioner will be advised either by the Chairman of the body where the petition was presented, or by the Head of Strategic Support, within three clear working days, as to where the petition will be referred. However, if the petition relates to a matter on the agenda for the meeting of the Executive, it shall be dealt with at that meeting. ¶

Petitions relating to licensing or planning applications will normally be received by Officers during the licensing or planning consultation process. Petitions relating to a specific application under the licensing Act 2003 or the Gambling Act 2005 must be submitted within the statutory consultation period if it is to be considered by the sub-Committee determining the application. ¶

<#>Petitions Received Outside of the Council's Meetings¶

Petitions received outside of the Council's meetings (i.e. presented to an Officer), will also be dealt with in accordance with Appendix C to Part 13 of the Constitution (Procedure Rules for Dealing with Representations). ¶ The Officer receiving the petition will acknowledge the petition and send a copy to all Members and notify the Strategic Support Service for inclusion on the petitions website and the Forward Plan. ¶ Strategic Support will invite the petition organiser to attend the meeting at which their petition is to be answered, where this response is not made by Individual Decision. A copy of the appropriate agenda and report will be sent with the letter and a copy will be sent to the Ward Member(s). ¶

Deleted: April

- That the question be now put.
- That a Member named under Rule 5.14 (Behaviour of Members) be not further heard or leave the meeting
- To allow a member of the public to speak in accordance with Rule 5.17.4. (Speaking).

[Note: Any Procedure Rule may be suspended in accordance with Procedure Rules 5.10.1 (Suspension of Rules of Procedure) and 5.10.2 (Variation/ Revocation of Rules of Procedure) provided the effect either individually or cumulatively is not to suspend all Procedure Rules.]

5.9.5 Motions on Expenditure or Revenue

Any Motion which would materially increase expenditure, involves capital expenditure, or materially reduces the revenue of the Council, or involves the disposal of a significant asset, shall when seconded stand adjourned without discussion to the next meeting of the Executive, with a report back to the next ordinary meeting of the Executive. This Rule does not apply to any Motion proposed at the Budget meeting of the Executive.

5.10 Suspension, Variation and Revocation of Rules of Procedure

5.10.1 Suspension of Rules of Procedure

With the exception of Rules 5.7.1 (Approval of Minutes) and 5.16.3 (Recording of Votes) any Procedure Rule may be suspended for any business at a meeting where its suspension is moved provided either:

- notice of Motion has been given; or
- at least one half of the whole number of Members of the Executive are present.

[Note: See Rule 5.9.4 (Motions which May be Moved Without notice) above.]

5.10.2 Variation/Revocation of Rules of Procedure

Any Motion to vary or revoke the Rules of Procedure shall when proposed and seconded stand referred without discussion to the next ordinary meeting of the Executive.

5.11 Procedure for Reports at Executive Meetings

5.11.1 Executive Report

The Executive Leader or relevant Member of the Executive shall present the report and move the recommendation requiring the Executive's approval. Upon being seconded the matter is open for debate, and Members of the Executive may make statements and ask questions of the Mover as appropriate. The Rules of Debate set out in 5.13 will apply.

5.11.2 Confidentiality and Non-Disclosure of Reports

Reports to Committees, Sub-Committees, Panels or Task Groups which are "not for publication" in accordance with the statutory provisions on the grounds that they contain confidential or exempt information shall be

treated as confidential and shall not be disclosed by a Member or Officer of the Council unless the Committee, Sub-Committee, Panel or Task Group decides otherwise.

After the meeting of the Committee, Sub-Committee, Panel or Task Group the information shall continue to be treated as confidential except insofar as it ceases to be confidential by virtue of the statutory provisions or its inclusion in the Minutes of the meeting which are made available for public inspection.

5.12 Questions

5.12.1 Public Written Questions

Members of the public residing or working in the District, or their representative, may ask the appropriate Member of the Executive any question relating to the business of the Council, a matter for which the Council has responsibility or the wellbeing of West Berkshire. The Executive Leader will nominate an appropriate person to provide an answer if the questioner has not indicated from whom they would prefer to receive a response. Such questions may only be asked at ordinary meetings of the Executive.

Questions must be submitted in writing by post, fax or electronic mail to the Head of Strategic Support and must specify the name, address and contact telephone number of the person asking the question.

Questions that do not relate to an item of business for that meeting of the Executive must be submitted no later than 10.00am, seven clear working days before the meeting.

Questions relating to an item of business for that meeting of the Executive must be submitted no later than 10.00am, one working day before the meeting.

5.12.2 Members' Written Questions

Members may ask any Member of the Executive any question relating to the business of the Council or the wellbeing of the West Berkshire. Such questions may only be asked at ordinary meetings of the Executive.

Questions indicating the name of the person submitting it, must be submitted in writing by post, fax or electronic mail to the Head of Strategic Support.

Questions must be submitted no later than 10.00am, seven clear working days before the Executive meeting.

Subject to the consent of the Executive Leader a question may be considered by the Executive if it is submitted to the Head of Strategic Support by 10.00am on the day of the meeting.

Councillors must confine their contributions to questions and answers and must not make statements or attempt to debate the matter. Where the Executive Leader feels that a Councillor is contravening this rule they will stop the Councillor concerned from speaking on this matter.

Deleted: April

5.12.3 Scope of Questions

The Monitoring Officer or Head of Strategic Support may reject a question or a supplementary question if it is not about a matter over which the Council has responsibility, it is defamatory, frivolous, it is abusive, it is substantially the same as a question which has been put at a meeting of the Executive in the past six months, it requires the disclosure of confidential or exempt information or relates to a licensing or planning application.

Where a question has been rejected a letter will be sent to the questioner setting out the reasons for the rejection.

5.12.4 Written Questions concerning the Thames Valley Police Authority (TVPA) and Royal Berkshire Fire and Rescue Service (RBFRS)

Subject to the Rules of Procedure on receipt, a Member may also ask the person nominated by the TVPA a question on the functions or performance of that Authority or one of the Council's representatives on the RBFRS a question in relation to the functions or performance of the RBFRS.

5.12.5 Member and Public Written Questions – Procedure at Executive

Subject to Rule 5.12.9 (Multiple Member and Public Questions) below, questions shall be taken in order of receipt and shall be asked by saying "I ask my question as set out in the Agenda" and then answered without discussion.

Any Executive Member may decline to answer a question or may nominate another Member to answer a question on their behalf.

5.12.6 Answers to Questions

An answer may take the form of:

- a direct oral answer;
- a reference to a Council publication containing the desired information;
- a written answer where a reply cannot conveniently be given orally or because of a lack of time.

The Executive Leader in consultation with the Monitoring Officer may reject any supplementary questions on any of the grounds in rule 5.12.3 (Scope of Questions).

5.12.7 Supplementary Questions

A person asking a written question may ask one supplementary question arising directly out of the answer given to the original question but the supplementary question shall be relevant to the original question and shall not introduce any new subject matter. For the avoidance of any doubt the Executive Leader will invite the questioner to ask a supplementary question if the questioner has one.

5.12.8 Time Limit on Questions

The time allowed for written and supplementary questions at any meeting shall not exceed thirty minutes for public questions or one hour for

Members' questions or such longer period as the Executive Leader may permit. Questions not answered within that period will receive a written reply.

5.12.9 Multiple Member and Public Questions

If any person(s) submit(s) more than one question at any meeting only their first question shall be asked and answered. If after all other questions have been asked and answered there is sufficient time available the Executive Leader may ask the questioner(s) to ask their further question(s) in such order as the Executive Leader determines.

5.12.10 Order of Questions

The Executive Leader has the discretion to alter the order in which questions are asked.

5.12.11 Absence of Questioner

If a person who has submitted a question is not present when the question is called, the question may, with the consent of the Executive Leader, be asked by any other person.

5.13 Rules of Debate

5.13.1 Seconding

A Motion or amendment shall not be discussed until it has been formally moved and seconded. When seconding a Motion or amendment, a Member may reserve his/her speech until a later period in the debate.

5.13.2 Writing

The Executive Leader may require a Motion or amendment to be put into writing before it is discussed or voted upon.

5.13.3 Speech content

Members shall direct speeches to the matter under discussion, a point of order or personal explanation.

5.13.4 Speech length

The Chairman may terminate a speech by a Member if he/she considers that it is not contributing to the effective working of the meeting.

5.13.5 Amendments

An amendment to a Motion must be relevant to the Motion and will either be:

- (a) to refer a subject of debate to Council, a Committee or Statutory Officer for consideration or reconsideration unless the Executive Leader rules otherwise in the interests of expedience; or
- (b) to leave out words; or
- (c) to leave out words and add others; or
- (d) to insert or add words;

as long as the effect of (b) to (d) is not to negate the Motion or to introduce a new subject matter.

Deleted: April

5.14 Behaviour of Members

5.14.1 Disorderly Conduct

If, at a meeting of the Executive, a Member:

- persistently disregards the ruling of the Executive Leader; or
- behaves irregularly, improperly or offensively; or
- wilfully obstructs the business of the Executive;

any Member may move:

- that the Member named not be heard any further;
- that the Member named shall leave the meeting; and
- if the Motion is seconded, it be put to the vote without discussion.

5.14.2 Suspension of Sitting

If there is a general disturbance or if the named Member or member of the public continues to misbehave after a Motion under Rule 5.9.4 (Motions which may be Moved without Notice) has been carried and orderly business is prevented the Executive Leader may adjourn the meeting for as long as they consider necessary.

5.15 Rescinding an Earlier Resolution

5.15.1 Six Months Rule

A Motion may not be moved to rescind a decision made at a meeting of the Executive within the preceding six months.

5.15.2 Rejected Motion

A Motion or amendment in similar terms to one that has been rejected at a meeting of the Council in the last six months cannot be moved.

5.15.3 Executive Decision

The Executive may, by a majority of those voting, rescind a decision that it has previously made.

5.16 Voting

5.16.1 Method of Voting

Voting shall be by show of hands. Unless the Constitution or the law provides otherwise any matter will be decided by a simple majority of those present and permitted to vote on the matter at the time the question is put.

5.16.2 Chairman's Casting Vote

In the event of equal numbers of votes for and against the Executive Leader (or standing Chairman) will have a second or casting vote.

5.16.3 Recording of Votes

A record of how a vote is, or votes are, cast (as the case may be) will be made if:

- before a vote is taken any Member requests that the vote be recorded and three other Members support that request by standing in their places. In these circumstances the Monitoring Officer or his/her representative will call the name of each Member present and each Member will respond for or against the Motion or abstaining;
- immediately after a vote has been taken any Member requests that their vote for or against or their abstention be recorded.

5.16.4 Appointments to Outside Bodies

If more than two persons are nominated for any position to be filled by the Executive on an outside body the outcome shall be determined by a simple majority of votes. If there is no majority the Executive can decide not to appoint. Appointments to Outside Bodies will be made in accordance with Appendix J to Part 13 of the Constitution (Protocol for Council Representation on Outside Bodies).

Note: Appointments to Outside Bodies have been delegated to the Leader of the Council.

5.17 Press and Public

5.17.1 Admission

The press and public shall be permitted to attend meetings of the Executive unless excluded under the relevant provisions of the Local Government Act 1972 and in accordance with Part 8 of the Access to Information Rules of Procedure or any other legislative provision.

5.17.2 Exclusion of Employee

During any discussion on the appointment, promotion, dismissal, salary, conditions of service or conduct of a Council employee, the employee shall not be present except to make representations on his/her own behalf either personally or by or with such representatives as the Executive may agree to receive.

5.17.3 Removal

If a member of the public interrupts the proceedings at any meeting the Executive Leader may, after warning, order their removal from the meeting of the Executive. If there is a general disturbance the Executive Leader shall order that the part of the room open to the public be cleared.

5.17.4 Speaking

Members of the public may only speak at a meeting if the Executive so resolves or when presenting a petition or asking a question in accordance with these Rules of Procedure.

5.17.5 Televising and Sound Recording of Meeting

The televising and sound recording of meetings will be permitted in accordance with the protocol relating to this matter. The protocol is available below at Appendix A to Part 5.

Deleted: April

Appendix A

Code of Practice Relating to Televising and Sound Recording of Meetings

The televising or sound recording of meetings of the Council, Executive, Committees or Commissions will be permitted, subject to the Code of Practice set out below:

1. Requests for permission to film or take sound recordings should be submitted 24 hours before the start of the meeting to the Head of Strategic Support and may be refused if it is considered that the meeting room is not of an adequate size or because of reasons specified by the Head of Strategic Support.
2. The Head of Strategic Support shall consult the Chairman or Vice-Chairman of the meeting regarding a request to film or record a meeting.
3. Filming or recording will only be permitted for a public purpose.
4. Television crews or persons undertaking sound recording shall comply with the requests of the Head of Strategic Support or his/her representative as to arrangements for filming and recording.
5. No filming or recording will be permitted, and persons present for those purposes will be required to leave the meeting, if a resolution is passed under Section 100A of the Local Government Act 1972 excluding the press and public from the meeting.
6. Filming or recording of a member of the public will only be permitted if the Executive, Committee, Commission, etc., agrees.
7. Filming or sound recording must not cause any nuisance or interfere with any electronics or with the conduct of the meeting.
8. No link will be permitted to the Council's sound recording equipment, neither may any equipment be placed on tables within the area occupied by Members or Officers.
9. If there is a breach of this Code of Practice, the Chairman may at his or her discretion, after a warning, order that no further sound recording or filming shall take place during the meeting.

West Berkshire Council Constitution

Style Definition: Heading 3,1.1.1 Heading 3: Font: Not Bold, Indent: Left: 0 cm, Hanging: 2 cm, Don't keep with next, Tabs: 2 cm, List tab + Not at 1.27 cm

Style Definition: Bullet Indent 1: Indent: Left: 2 cm, Hanging: 1 cm, No widow/orphan control, Tabs: 3 cm, List tab + Not at 1.27 cm

Part 11

Contract Rules of Procedure

Document Control

Document Ref:	WB/P&C/MF/2008-11	Date Created:	May 2007
Version:	3	Date Modified:	April 2012
Revision due	Annual		
Author:	Moira Fraser – Democratic Services Manager		
Owning Service	Strategic Support		

Change History

Version	Date	Description	Change ID
1.1	Sept 2008	Amended to include up to date guidance on the use of consultants	
2	Jan 2010	Significant re-write in line with current legislation.	
3	April 2012	Changes to whole document as a consequence of the Senior Management Review	
<u>4</u>	<u>December 2012</u>	<u>Significant re-write to bring in line with current law, practice and procedures. Also to streamline it.</u>	



West Berkshire
C O U N C I L

Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:

<http://www.opsi.gov.uk/legislation/uk>

If you require this information in a different format, such as audio tape or in another language, please ask an English speaker to contact Moira Fraser on 01635 519045 who will be able to help.

Contents

- 11.1 Application of Contract Rules of Procedure.....1
- 11.2 Purpose of Contract Rules of Procedure.....1
- 11.3 Tendering – Preliminaries2
- 11.4 Authority.....2
- 11.5 Tendering - Financial Thresholds & Procedures2
- 11.6 Tendering - Advertising3
- 11.7 Tendering - Contract Value & Aggregation.....4
- 11.8 Tendering - Principles and Evaluation.....4
- 11.9 Tendering - Submission and Opening of Tenders4
- 11.10 Tendering – Evaluations of Quotes and Tenders5
- 11.11 Exceptions to Contract Rules of Procedure.....5
- 11.12 Purchasing Schemes7
- 11.13 Prevention of Corruption7
- 11.14 Entering into a Contract8
- 11.15 Legal Consideration9

Deleted: 1

Deleted: 8

Deleted: Updated April 2012

11.1 Application of Contract Rules of Procedure

11.1.1 These Contract Rules of Procedure apply to purchases by or on behalf of the Council of works, supplies (goods) and services.

11.1.2 These Contract Rules of Procedure apply to all contract including purchase orders, consultancy agreements, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are expressly excluded under the Public Procurement Regulations 2006.

11.1.3 These Contract Rules of Procedure (also referred to as the Contract Standing Orders) are made in accordance with the requirements of Section 135 of the Local Government Act 1972.

11.1.4 These Contract Rules of Procedure do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They seek to set out minimum requirements to be followed. Further information and guidelines will be set out in the Council's Desktop Procurement Guide which it is intended when developed and approved will accompany this document.

11.1.5 The Council has designated that the Head of Legal Services be the Monitoring Officer.

11.1.6 In the event where a Governing Body of a school, under the control of the Local Education Authority, intends to enter into a contract for works, supply of goods or services the Head teacher or such persons as delegated by him/her. must follow these Contract Rules of Procedures.

11.1.7 In the event of a declaration of major incident the Council's Major Incident Plan and/or Business Continuity Plan may be invoked. This in turn may lead to the need to incur additional unbudgeted expenditure. When this becomes necessary the Contract Rules of Procedure will be suspended and the Chief Executive, or an officer nominated by the Chief Executive, is then authorised to incur whatever expenditure is necessary in consultation with the Head of Finance. A Corporate Director will act in the place of the Chief Executive if he/she is unavailable.

11.1.8 failure to comply with these Contract Rules of Procedure will be viewed by the Council as a breach of the Officers' Code of Conduct contained within Part 13 (Codes and Protocols) of this Constitution and may be considered as a disciplinary matter.

11.2 Purpose of Contract Rules of Procedure

11.2.1 The purpose of these Contract Rules of Procedure is to provide a structure within which procurement decisions are made and implemented to ensure that the Council further its corporate objectives in an efficient manner leading to procurement of quality goods, services and works.

11.2.2 These Contract Rules of Procedure protect the legal position of the Council in respect of compliance with the law and in its contractual dealings with external suppliers and contractors. They protect the interests of Members, Officers and the Citizens of West Berkshire. The Head of Legal Services shall be responsible for interpreting these Contract Rules of Procedure.

Deleted: Introduction

Deleted: the

Deleted: Subject to any specific provisions to the contrary, these Rules apply in every case where the Council enters into an agreement with another person for the supply of goods, materials or services to, or the execution of work for, the Council. These regulations apply equally to tenders and quotations.

Deleted: <#>Section 135 of the Local Government Act 1972. These Contract Rules of Procedure are made under the provisions of Section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council. They include provision for competition, and regulate the manner in which tenders are invited.

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Deleted: ¶

Formatted: Bullets and Numbering

Deleted: Statutes ¶
 <#>The statutes and statutory instruments that currently affect these Regulations are as follows: ¶
 <#>Local Government Act 1972; ¶
 <#>Local Government Act 1988; ¶
 <#>Education Reform Act 1988; ¶
 <#>Local Government and Housing Act 1989; ¶
 <#>Environmental Protection Act 1990; ¶
 <#>Local Government Act 1992; ¶
 <#>Local Government Act 1999; ¶
 <#>Local Government Act 2000; ¶
 <#>The Public Contracts Regulations 2006. ¶
 <#>The Public Contracts (Amendment) Regulations 2009 ¶
 <#>Amendments ¶
 Any amendments to the above or new legislation will be deemed to be included in these Rules without the need for a specific reference here.

Deleted: Updated April 2012

11.3 Tendering – Preliminaries

11.3.1 It is the responsibility of the Chief Executive, Corporate Directors, and Head of Services to ensure all purchases of goods and services and works comply with:

- (a) all relevant statutory requirements;
- (b) the relevant EU Rules and EU Treaty Principles and Directives.
- (c) the Council Constitution including these Contract Rules of Procedure and Financial Rules of Procedure and Scheme of Delegation.
- (d) any code, guidance or conditions approved by the Governance & Audit Committee and/or the Executive and/or the Council to the exercises of powers delegated by them.
- (e) any conditions attached by the Executive or the Council to the exercise of powers delegated by them.
- (f) the proposed Council's Desktop Procurement Guide (to include Consultancy Guides) and other policies and procedures of the Council as appropriate.

Deleted: A

Deleted: T

Deleted: T

11.3.2 In the event of conflict between the above, the EU Rules will take precedence, followed by UK legislation, then c, d, e, and f as above.

11.4 Authority

11.4.1 All transactions must fall within the powers delegated to the Chief Executive or Corporate Director or the Head of Service or must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive, the Council or one of its committees or sub-committees.

11.4.2 No contract, agreement or other document shall be signed or sealed unless it gives effect to:

- a decision or resolution (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive or one of its committees or sub committees; or
- a decision by an officer exercising delegated powers.

11.5 Tendering - Financial Thresholds & Procedures

11.5.1 The financial values (exclusive of Value Added Tax) at which processes become mandatory are set out in the table below:

<u>Total Value £</u>	<u>Type of contract</u>	<u>Procedure to be used</u>
<u>1,000 to 9,999</u>	<u>Works, supplies and services</u>	<u>At least one quote must be sought from an appropriate source.</u>
<u>10,000 to 49,999</u>	<u>Works, supplies and services</u>	<u>At least three written invitation to quote must be sent to appropriate sources.</u>

Deleted: Updated April 2012

<u>Total Value £</u>	<u>Type of contract</u>	<u>Procedure to be used</u>
<u>50,000 to EU threshold*</u>	<u>Works, supplies and services</u>	<u>Full competitive tender process applies and at least five written tenders must be sought following advertisement by public notice.</u>
<u>Above EU threshold* for supplies and services</u>	<u>Supplies and services</u>	<u>EU Rules apply – full competitive process following advertisement in the Official Journal of the European Union for supplies and Part A* services.</u> <u>For Part B* services reduced requirements apply under the EU Rules however there is a requirement to adhere to EU principles of openness, transparency, equal treatment and fairness.</u>
<u>Above EU threshold* for works</u>	<u>Works</u>	<u>EU Rules apply – full competitive process following advertisement in the Official Journal of the European Union</u>

* There are two different EU thresholds, one for works and the other for supplies and services. To obtain the latest values please contact Legal Services.

11.6 Tendering - Advertising

- 11.6.1 There is a general presumption in favour of competition. Where possible contract opportunities should be advertised by way of a public notice and/or electronically on the Council's Procurement Portal. For opportunities relating to works, services and supplies which fall below the EU threshold a UK Government Certified national database (such as Constructionline) can be used to select tenderers.
- 11.6.2 All contract opportunities which are:
- above the EU thresholds; and
 - subject to the full application of EU procurement rules
- must be advertised by notice in the Official Journal of the European Union ("OJEU notice") prior to such advertisement appearing on any other advertising medium (such as trade journal etc.).
- 11.6.3 However under the EU Treaty principles where the contract is of potential cross border interest then it must be publicised to ensure that tenderers from other member states have an opportunity to participate and the process is conducted in a fair and transparent manner.
- 11.6.4 Where contracts are of a type and value that mean the EU Rules apply to them then there are four main types of EU procedures available. These are open, restricted, competitive dialogue and competitive negotiated

Deleted: Updated April 2012

procedure. Care must be taken to ensure that the correct and most appropriate procedure is used and advice is sought from Legal Services on the choice and use of EU procedure. OJEU notices must be approved and issued by Legal Services who will also assist in the conduct of the procurement.

11.7 Tendering - Contract Value & Aggregation

11.7.1 The contract value shall be the total cost of the supply, service or work to be procured over the contract term. The starting point for calculating the contract value for the purposes of these Contract Rules of Procedure is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions, variations and options).

11.7.2 There shall be no artificial splitting or disaggregation of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Rules of Procedure.

11.7.3 The EU Rules can cover contracts, which are below the stated EU threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Officers responsible for the procurement should therefore seek advice on the application of the EU Rules where they envisage that they may require to make such purchases.

11.8 Tendering - Principles and Evaluation

11.8.1 All tendering procedures (including obtaining quotes), from planning to contract award and execution (seal or signature), shall be undertaken in a manner so as to ensure:

- sufficient time is given to plan and run the process
- equal opportunity and equal treatment
- openness and transparency
- probity
- outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

Deleted: S

Deleted: E

Deleted: O

Deleted: P

Deleted: O

11.8.2 Before undertaking any procurement exercise the Officer responsible for the procurement must complete (in writing) the following:

- Sustainability Impact Assessment (as appropriate).
- Equality Impact Assessment (as appropriate).

Deleted: S

11.9 Tendering - Submission and Opening of Tenders

11.9.1 An Invitation to Tender shall be issued by the Council for all contracts over £49,999 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.

11.9.2 Any tenders received (other than those received electronically, to which **11.9.3** shall apply) shall be:

Deleted: Updated April 2012

- addressed to the relevant Head of Service; in an unmarked, plain and sealed envelope marked "Tender" followed by the subject matter to which it relates.
 - kept in a secured cabinet.
 - retained unopened until the date and time specified for its opening.
- 11.9.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically using the Council Procurement Portal . then those tenders shall be:
- in the format specified in the Invitation to Tender
 - stored in a secure portal account which is locked until the date and time specified for its opening.
- 11.9.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Head of Legal is satisfied that there are exceptional circumstances and the other tenders have not been opened.
- 11.9.5 Where a tender is expected to have a value in excess of £49,999, and is not electronically submitted using the Procurement Portal, the relevant Head of Services shall invite the appropriate Portfolio Holder and a Procurement or Legal Officer to undertake the tender opening and shall complete a standard tender opening form as issued by Legal Services (available on the intranet).
- 11.9.6 Where the tender is expected to have a value in excess of £49,999, and is electronically submitted using the Procurement Portal then the relevant Head of Service shall facilitate electronic tender opening in the presence of an appropriate Portfolio Holder and a Procurement or Legal Officer. Further details on how to facilitate electronic tender opening will be detailed in the Council's Desktop Procurement Guide.

11.10 Tendering – Evaluations of Quotes and Tenders

- 11.10.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders.
- 11.10.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules. Advice from Legal Services should be sought on the selection and evaluation criteria.
- 11.10.3 Save in exceptional circumstances approved in advance by the relevant Head of Service all contracts shall be awarded on the basis of the quote or tender which is most economically advantageous and represents best value for money to the Council and not on the basis of lowest price.

11.11 Exceptions to Contract Rules of Procedure

- 11.11.1 Subject to 11.11.2 the requirement for the Council to conduct a competitive purchasing process for contracts in excess of £9,999, may be excepted or waived in the following circumstance:
- for contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property;

Deleted: F

Deleted: Updated April 2012

or

- the circumstances set out in the Public Contract Regulations 2006 Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or
- the contract is awarded under a Purchasing Scheme (refer to 11.12) of a type where a competition has already been undertaken on behalf of the Council or other public sector organisation; or
- the proposed contract is an extension to or a variation of the scope of an existing contract where the contract is not subject to the application of the EU Rules.
- at the discretion of the relevant Corporate Director and/or the Chief Executive who may proceed in a manner most expedient for the efficient management of the service/ Council with reasons recorded in writing.

11.11.2 Only the Head of Legal Services and/or the Head of Finance (as S151 Officer) or such officer as nominated by them may grant a waiver or an exception, subject to Exception Values and delegations below, to these Contract Rules of Procedure. An Officer, who seeks a waiver of Contract Rules of Procedure, shall do so only in advance and only in exceptional circumstances.

11.11.3 Exception values and delegations

- (a) For all contracts up to £49,999 the Section 151 Officer or nominated Officer must approve the exception provided an exception report has been approved by the Procurement Board.
- (b) For contracts up to the EU threshold the Section 151 Officer or nominated Officer will consult with the Head of Legal Services and the appropriate Corporate Director provided an exception report has been approved by the Procurement Board.
- (c) For contracts between EU threshold and £500,000 the exception will be dealt with by way of recommendation to the Corporate Board after consultation with the Section 151 Officer and with the Head of Legal Services or such officer as nominated by them provided an exception report has been approved by the Procurement Board.
- (d) For contracts over £500,000 the Section 151 Officer and the Head of Legal Services or such officer as nominated by them will make a recommendation to the Executive provided an exception report has been prepared and approved by the Procurement Board.

11.11.4 All exceptions or waivers from these Contract Rules of Procedure must be:

- Fully documented;
- Subject to a written exception report to be submitted in advance to the Procurement Board by the relevant Head of Service or Corporate Director which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
- Subject to an approval by the Section 151 Officer (or nominated officer) who shall record that he/she has considered the reasons for

Deleted: Updated April 2012

the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Applications for waivers which are a result of poor contract planning will rarely be considered genuinely exceptional.

- Relevant approval has been sought under 11.11.3.

11.11.5 For contracts subject to the EU Rules, any waiver or exception from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

11.12 Purchasing Schemes

11.12.1 An officer responsible for the procurement exercise may use Purchasing Schemes subject to the following conditions: -

11.12.2 An officer responsible for the procurement must seek advice in advance that:

- the Council is legally entitled to use the Purchasing Scheme
- the purchases to be made do properly fall within the coverage of the Purchasing Scheme
- the establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.

11.12.3 A "Purchasing Scheme" may include:

- Contractor prequalification lists/select lists
- Framework arrangements (including those set up by the Government Procurement Service).
- Purchasing arrangements set up by central purchasing bodies and commercial organizations
- Consortium purchasing
- Collaborative working arrangements
- Formal agency arrangements
- E-procurement / purchasing schemes and methods
- Other similar arrangements.

11.12.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Rules of Procedures in respect of the choice and conduct of procedures. Advice should be sought from Legal Services prior to entering to such arrangements.

11.13 Prevention of Corruption

11.13.1 The public is entitled to demand of Local Government Officers conduct of the highest standard. Public confidence in their integrity would be undermined were the least suspicion, however ill-founded, to arise that they could in any way be influenced by improper motives.

11.13.2 Where a Member or Officer of the Council has an interest in a contract or a proposed contract whether it is a disclosable pecuniary interest or

Deleted: Formal Exemption¶
<#>The Council can formally exempt itself from any of these rules (Rule 12.8 (Exceptions to Contract Rules of Procedure refers). However, it may not exempt itself from statutory requirements (for example the Public Contract Regulations referred to in Rule 12.1.3 (Statutes)).¶
<#>Non-Disaggregation of Contracts¶
<#>Contracts must not be disaggregated in order to avoid these Contract Rules of Procedure or EU Directives. The contract value shall be the total cost of the supply, service or work to be procured over the contract term. Care must be taken that this does not breach the aggregation rules of the EU Directives. ¶
<#>Maintenance of Records¶
Adequate records must be maintained by all staff, consultants and agents to demonstrate that the provisions of these Rules and relevant legislation have been complied with.

Deleted: <#>European Procurement Rules¶
<#>Seeking Advice¶
<#>Advice must always be taken from Head of Finance and the Head of Legal Services or such officers as nominated by them Officer in respect of:¶
<#>applicability of the regulations to tendering;¶
<#>producing and advertising EU tender notices for publication in OJEU ("the Official Journal of the European Union");¶
<#>preparing tender documents;¶
<#>award criteria for tender selection;¶
<#>evaluation process and debriefing;¶
<#>Notification of the decision.¶
<#>Public Procurement Regulations¶
<#>The procedures for the award of public works, public supply and public services contracts have been incorporated into The Public Contracts Regulations 2006 and the Public Contract ... [1]

Deleted: <#>General¶

Deleted: ¶

Deleted: <#>Member or Officer Interests¶

Deleted: personal or prejudicial interest, financial

Deleted: Updated April 2012

otherwise and is also involved in the process of letting or managing of that contract, this interest must be registered with the Monitoring Officer who shall decide on whether that Member or Officer should be involved or not.

Deleted: in a contract or proposed contract,

11.13.3 In the case of ownership of shares Members should seek advice from the Head of Legal Services as to the current level of share ownership accepted by the Standards Committee or any such successor authority as being de minimus for the purposes of declarations of interest.

Deleted: In the case of a Member the interest must also be declared at the meeting of any committee, sub - committee or project board at which the Member is present and at which the contract or proposed contract is discussed. If the interest is prejudicial and the Member should leave the meeting and take no part in any discussions or seek to influence any decision.¶

11.14 Entering into a Contract

Deleted: Board

11.14.1 There should be written evidence of all purchases.

11.14.2 All contracts entered into by the Council must be in writing in a form approved by the Head of Legal Services or his delegated officer. Where a standard form of contract is used, or a standard form is to be amended, the form of contract shall be prepared/amended by the Head of Legal Services or his delegated officer. The Head of Legal Services shall retain all relevant contract documents.

Deleted: <#>¶
<#>Statutory Provisions¶
<#>The following statutory provisions govern contracts and other matters:¶
<#>The obligations of elected Members to disclose interests in contracts and other matters and to refrain from speaking or voting thereon which are prescribed by Sections 94 to 98 and 105 of the Local Government Act 1972 and Section 19 of the Local Government and Housing Act 1989.¶
<#>The duty of Officers to disclose interests in contracts as required by Section 117 of the Local Government Act 1972.¶
<#>Section 117 also requires that "an Officer shall not, under cover of her/his office or employment, accept any fee or reward whatsoever (... [2])

11.14.3 The relevant Head of Service must formally notify the Head of Legal Services (or nominated officer) of the award of all contracts with the relevant data for the purpose of it being recorded on the Council Contract Register.

11.14.4 Every contract shall include wherever possible the standard clauses set out in Standard Form of Agreement issued and updated from time to time by the Head of Legal Services or his nominated officer and available from Legal Services.

11.14.5 As a minimum, all contracts of a value of £9,999 or more shall include clauses which set out:

- the works, supplies (goods), services, material, matters or things to be carried out or supplied.
- the time within which the contract is to be performed. Quality requirements and/or standards which must be met.
- requirements on the contractor to hold and maintain appropriate insurance.
- what happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part).
- requirements on the contractor to comply with all relevant equalities and health and safety legislation.
- that the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010.

Deleted: <#>Contract Form¶

Deleted: O

Deleted: Standard Forms of Contract must be used (... [3])

Deleted: S

Deleted: F

Deleted: cannot be

Deleted: S

Deleted: F

Deleted: F

Deleted: C

Deleted: T

Deleted: T

Deleted: R

Deleted: W

Deleted: R

Deleted: T

Deleted: All Forms of Contract must specify inter alia:¶ (... [4])

11.14.6 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Desktop Procurement Guide.

Deleted: Updated April 2012

11.15 Legal Consideration

11.15.1 **Indemnities:** No relaxation of full indemnities releasing the Council from all liability whether provided by public liability insurance or other instrument should be allowed unless authorised in writing by the Head of Legal Services and the Head of Finance or nominated Officer.

11.15.2 **Risk Assessment & Performance Bond:** Where a contract is estimated to exceed £49,999 in value or amount and is for the execution of works (or for the supply of goods or materials or services by a particular date or series of dates) the relevant Head of Service should consider requiring a performance bond (for an amount equal to 10% of the value of the contract) from the contractor. This is to provide sufficient security for the due performance of the contract. If a performance bond is considered not necessary then the relevant Head of Service must;

- undertake a risk assessment in writing.
- seek approval from the Head of Finance.
- keep a copy the risk assessment on the contract file for inspection.

11.15.3 **Insurances:** Every contract should be assessed for risk. If the risk assessment identifies the need for insurance the Head of Service must:

- in consultation with the Head of Finance or nominated Officer set adequate levels of insurance cover. This includes employer's liability, public liability and any other as determined by the needs of the particular contract;
- in consultation with the Head of Finance or nominated Officer ensure that the required insurances are in fact held by the contractor and that the policies concerned are renewed, if necessary, during the period required;
- in consultation with the Head of Finance or nominated Officer who must ensure the contractor's status under the Inland Revenue Construction Industry Tax Deduction Scheme (for construction contracts);
- in consultation with the Head of Finance set a consultants' professional indemnity insurance (for Consultancy agreements), minimum £5,000,000 cover unless the Risk Manager feels that a greater amount is required if so determined by the risk assessment process.

11.15.4 **Sealing:** All contracts above the value of £49,999 shall be sealed. The affixing of the seal shall be attested and witnessed in writing by the Head of Legal Services, or an Officer duly designated by him/her in accordance with the delegated powers conferred by the Council. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person attesting the sealing.

The Common Seal shall be in the Custody of the Head of Legal Services and kept in a safe place at his/her discretion. The Common Seal of the Council may be affixed to any document that has been approved by a resolution of the Council; or of the appropriate Committee or an Officer to

Deleted: <#>Contract Presentation¶
 <#>Contracts under £5,000 shall be in writing on an official order signed by the designated purchasing Officer.¶
 <#>Between £5,000 and £50,000 contracts and one-off purchases shall be in writing in the form of a contract approved by the Contracts & Procurement Unit unless it is a standard form of contract with a specification attached if necessary.¶
 <#>All contracts over £50,000 to EU threshold - the form of contract must be approved and signed by the Head of Legal Services who shall retain all relevant contract documents. The Head of Legal Services must witness the affixing of the common seal of the Council to any such contract.¶
 <#>EU and over - the form of contract must be approved and signed by the Head of Legal Services who shall retain all relevant contract documents. All contracts over the EU threshold will be sealed.¶

Deleted: Standard Clauses¶ (... [5])

Deleted: s¶
 Deleted: Relaxation of Indemnities¶

Deleted: or the Risk Manager,

Deleted: ¶

Deleted: Risk Assessments¶

Deleted: 50,000

Deleted: must

Deleted: , in conjunction with the Head of Finance or nominated Officer to dete (... [6])

Deleted: This is to provide sufficient security for the due performance of the contract. A

Deleted: record of

Deleted: must be retained

Deleted: <#>Where it is felt necessary, such bonds required shall be for an amount eq (... [7])

Deleted: ¶
 E

Deleted: (a) .

Deleted: (b) .

Deleted: (c) .

Deleted: (d) .

Deleted: Sealing of Documents¶

Deleted: ¶

Deleted: Updated April 2012

which the Council or the Executive has delegated its powers on its behalf, provided that a resolution of the Council or of the appropriate Committee or Officer where that appropriate Committee or Officer has the appropriate authority authorising the acceptance of any tender, the purchase, sale, letting or taking of any property, the issue of stock, the presentation of any petition, memorial or address, the making of any rate, contract or order, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

The Common Seal of the Council may be affixed to any:

- petition to be presented to Parliament against the promotion of any Bill or confirmation of any Provisional Order which the Council opposes.
- mortgage in respect of a loan arranged by the Head of Finance or nominated Officer under the powers of Heads of Service approved by the Council.
- incomplete form of transfer for the duly authorised sale of securities by the Council as necessary for the purposes of dealing with stocks and shares in accordance with the Stock Transfer Act 1963.

11.15.5 Signature of Documents: Where any document will be a necessary step in legal proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises or the Council shall have given the necessary authority to some other person for the purpose of such proceedings, be signed by the Head of Legal Services.

11.15.6 Where it becomes necessary to execute any document on behalf of the Council not required by law to be under Seal, the Head of Legal Services or an Officer designated by him/her in accordance with the delegated powers conferred by the Council shall be deemed to have authority to sign such a document accordingly. A register of such documents shall be kept by the Head of Legal Services or Officer duly designated by him/her.

11.15.7 Counsel: Within budget, the Head of Legal Services (or nominated offer) shall have discretion to select Counsel, obtain Counsel whenever it is considered expedient in the Council's interest to do so.

Deleted: ¶

Deleted: Provided also that the Common Seal of the Council may be affixed to any: ¶

Deleted: <#>Affixing of Seal¶
<#>The affixing of the seal shall be attested in writing by the Head of Legal Services, or an Officer duly designated by him/her in accordance with the delegated powers conferred by the Council. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person attesting the sealing.¶

Deleted: ¶

Deleted: ¶

Deleted: Contract Administration¶
<#>Payment by Instalments¶
<#>Payments to contractors shall be made on a certificate issued by the Head of Service (or private architect, engineer or consultant where engaged by the Council) as appropriate or by another Officer nominated by him/her in writing for the purpose. Each payment must be checked by a colleague and the check should be evidenced by initialling. Within each Service an independent sampled check should be done, on a rotation basis, of 5% of interim payments.¶
<#>Variation to Contracts¶
<#>Subject to the provisions of the contract in each case every variation shall be authorised in writing by the Head of Service (or private architect, engineer or consultant) and Head of Finance or by another Officer nominated by him/her in writing for the purpose.¶
<#>Any such extra or variation shall include the estimated additional cost arising from the variation and the method of payment to be applied i.e. contractual rates, agreed rates or reimbursable/daywork (please note that payment on a reimbursable/daywork basis should only be used when an item cannot be physically measured/quantified). When calculating the cost of variations cross referencing to Bill of Quantities rates or daywork sheets etc must be completed so as to provide a clear audit trail. Where rates used depart from those in the contract or others previously agreed notes should be made for the r... [8]

Deleted: Updated April 2012