

Item 4

REPORT TO CABINET

9TH DECEMBER 2004

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

SUMMARY OF CHANGES TO THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) REGULATIONS 2000

1. SUMMARY

- 1.1 This Report summarises the effect of a series of changes to the division of responsibilities between Cabinet and Council. These changes will necessitate amendment to the Constitution.
- 1.2 The changes cover a wide range of functions: decisions upon borrowing and capital expenditure, new planning legislation, licensing, highways, Monitoring Officer's resources and overview and scrutiny.

2. RECOMMENDATIONS

- 2.1 That Cabinet be appraised of the changes.
- 2.2 To note that Standards Committee shall consider the Report and offer recommendations to full Council.
- 2.3 To note that full Council shall consider the Report and approve the same and delegate to the Monitoring Officer responsibility to amend the Constitution to take account of the changes.

3. DETAIL

- 3.1 This report sets out a summary of recent changes to the regulations which govern the division of functions and responsibilities between the Cabinet and Council, under its executive arrangements.
- 3.2 Part II of the Local Government Act 2000 provides for Local Authority functions to be allocated between the Executive (Cabinet) and the Full Council of an Authority, where the Authority is operating executive arrangements. In general, the approach to the division of functions between the Executive and the Authority is as follows:
 - (i) Determination of the Local Authority's policy framework and budget and other constitutional and quasi legislative functions are to be the responsibility of the Council.

- (ii) Functions which involve either determining an application from a person for a licence approval, consent, permission or registration, or direct regulation of a person with any related enforcement actions are also to be the responsibility of the Council, and
 - (iii) All other functions are to be the responsibility of the Executive (Cabinet).
- 3.3 In addition, Local Authorities are left to determine who, within the Authority, should be responsible for certain specific functions, known as “local choice functions”.
- 3.4 There are also certain specific functions that may not be the sole responsibility of the Executive (Cabinet). These are limited to matters where the Executive will want to have an input but not to have overall responsibility and these include Development Control functions.
- 3.5 **Borrowing and Capital Expenditure:** The Local Authorities (Functions and Responsibilities) (Amendment) Regulations 2004, which came into force on the 19th May 2004 provide that as regards those functions which are not to be the responsibility of the Executive (Cabinet): “in connection with the discharge of the function of formulating a plan or strategy for the control of a Local Authority’s borrowing or capital expenditure, certain actions shall not be the responsibility of the Executive (Cabinet). The designated actions include the giving of instructions requiring the Executive (Cabinet) to reconsider any draft plan or strategy submitted by the Executive for the Authority’s consideration, the amendment of any draft plan or strategy submitted by the Executive for the Authority’s consideration and the adoption (with or without modification) of the plan or strategy. These regulations also apply to the function of formulating a plan or strategy for the control of a Local Authority’s investments.
- 3.6 **Planning:** The Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) Regulations 2004, which came into force on the 28th September 2004, make significant changes to Schedule 1 of the Regulations of 2000, specifically relating to town and country planning and development control. These changes introduce a new paragraph A for the existing paragraph A in Schedule 1 of those regulations, largely to give effect to the introduction of the Planning and Compulsory Purchase Act 2004, parts of which came into force on the 31st October 2004.
- 3.7 The principal amendments are concerned with functions relating to development plan documents of local planning authorities. Local Development Documents include development plan documents and supplementary planning documents. As development plan documents form part of the statutory development plan, which, in turn, forms part of an Authority’s policy framework, development plan documents are not to be the responsibility of the Executive (Cabinet). Supplementary planning documents, however, do not form part of the statutory development plan and are not part of an Authority’s policy framework and so are to be the responsibility of the Executive (Cabinet).
- 3.8 The Local Authorities (Functions and Responsibilities) (Amendment) (No. 3), comes into effect on the 23rd November 2004 and sets out amendments to Schedules 1 and 2 of the 2000 Regulations. These are summarised in the succeeding paragraphs of this report.

- 3.9 **Licensing:** in accordance with the general approach to the division of functions, functions relating to licensing under the Licensing Act 2003 are to be the responsibility of the Authority.
- 3.10 **Highways:** Permissions, etc.: similarly, functions relating to the grant of permission for the provision and maintenance of services and amenities and to the provision, maintenance and operation of facilities for recreation on a highway under the Highways Act 1980 are to be the responsibility of the Authority; the power to stop-up or divert a highway under Section 247 of the Town and Country Planning Act 1990 is also the responsibility of the Authority.
- 3.11 **Staff appointed to support the Monitoring Officer:** duties relating to the delegation of functions of a Monitoring Officer, under Section 82A(4) and (5) of the Local Government Act 2000, are to be the responsibility of the Council. This is because they relate to constitutional matters and, as the full Council has responsibility for the Authority's Constitution, it is considered appropriate that those functions should not reside within the Executive (Cabinet).
- 3.12 **Overview and Scrutiny Committees:** the powers relating to the grant to co-opted members of an Overview and Scrutiny Committee of permission to vote at meetings of the Committee under paragraphs 12 and 14 of Schedule 1 of the 2000 Regulations, also relate to constitutional matters and so are to be the responsibility of the Authority.

4. RESOURCE IMPLICATIONS

- 4.1 No specific implications have been identified.

5. CONSULTATION

- 5.1 All Heads of Service have been appraised of these changes prior to consideration by Management Team.
- 5.2 Due account has been taken of views of staff of relevant services.

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Background Papers

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>