

Annual review of Constitution

Report of Helen Lynch, Head of Legal & Democratic Services and Monitoring Officer

Councillor Amanda Hopgood, Leader of the Council

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To present the Constitution, as updated following the annual review, for adoption by Council.

Executive summary

- 2 The Council's Constitution describes the four methods by which the Council operates; the Council, the Executive, Overview and Scrutiny and the Committees. It also provides the framework within which each must operate by including:
 - (a) the rules and procedures to be followed by the Council and committees when conducting their business;
 - (b) the decision-making powers of the Council, the Executive, Committees and Officers;
 - (c) the financial and contract regulations;
 - (d) the rights of the public;
 - (e) codes of conduct for councillors and employees;
 - (f) members allowances;
- 3 The Constitution is reviewed on an annual basis with a fundamental review undertaken periodically. The last review of the Constitution was presented to Council on 24 March 2021 and was presented to Council for adoption on 26 May 2021.

Recommendation(s)

- 4 The Leader and Cabinet are asked to:
 - a) approve the delegation of executive powers as set out in the proposed amendments to the officer scheme of delegation at paragraphs 35 - 44 of the report; and
 - b) recommend that Council agree to the proposed revisions to the Constitution at its meeting on 25 May 2022.

Background

- 5 Section 37 of the Local Government Act 2000 requires local authorities operating executive arrangements to prepare and keep up to date a document which contains:
 - (a) such information as the Secretary of State may direct;
 - (b) the authority's standing orders (i.e. rules of procedure);
 - (c) the code of conduct for members; and
 - (d) such information as the authority considers appropriate.
- 6 The Council must ensure that copies of the above are available for inspection by the public at all reasonable hours and supply a copy of the same upon request (upon payment of such reasonable fee as we may determine).
- 7 Durham County Council's Constitution is available on the Council's website.

Methodology for the Annual Review

- 8 Preparations for the annual review of the Constitution due to be considered by Council on 25 May 2022 commenced in the autumn of 2021, with service representatives being contacted to request that they consider what, if any, changes they believed were appropriate to the Constitution.
- 9 Those changes are presented within this report, together with any changes identified by Corporate Directors and Heads of Service as part of the 2022/23 update.
- 10 The proposed changes are summarised below. Where applicable, relevant extracts of the Constitution showing the proposed changes are shown at appendices 2 - 9 of this report.

Accessibility

- 11 There is a legal requirement with limited exemptions to have documents which are available on public sector websites to be accessible. The review of the Constitution has taken into account accessibility requirements. This has resulted in changes in the presentation of the

Constitution to format, numbering and layout but does not change the intent or content of the document.

Article 4 – The Full Council – B: Area Planning Committees

- 12 The structure of the authority's planning committees was agreed by the Council at its meeting on 17 December 2008. The arrangements were implemented on 1 April 2009. There is the County Planning Committee, and three Area Planning Committees.

- 13 The County Planning Committee comprises of 16 Members of the Council, excluding Members of the Executive, and is responsible for the following, except where delegated to an officer:
 - (i) To exercise the Council's functions relating to town and country planning and development control as set out in Section A of Schedule 1 to the 2000 Regulations, in relation to the following matters:
 - a. Residential development proposals involving 200 or more dwellings or a site area of 4 hectares or more
 - b. All non-residential development proposals (including commercial, retail and industrial developments) of 10,000 or more square metres floorspace or a site area of 2 hectares or more.
 - c. Development proposals involving the erection of one or more wind turbines described as Medium-Large or Large and having a height in excess of 40 metres to the blade tip or a site area of 1 hectare or more.
 - d. Applications for renewable energy developments (including Biomass, Hydro-Electric, Geothermal, Gasification or Photovoltaics) of 1 hectare or more.
 - e. All development proposals relating to minerals or waste
 - (ii) Development which in the opinion of the Head of Planning Services is of strategic significance, including strategic schemes promoted by the County Council.

- 14 There are three Area Planning Committees of:

- north Durham (comprising the former District Council areas of Chester le Street and Derwentside)
 - central and East Durham (comprising the former District Council areas of Durham City and Easington)
 - south and West Durham (comprising the former District Council areas of Sedgefield, Teesdale and Wear Valley)
- 15 Each Area Planning Committee is comprised of 16 Members of the Council, with 8 members representing electoral divisions within the Committee's area and 8 other members from the rest of the County excluding Members of the Executive. This approach was considered to achieve a balance between local and strategic influences.
- 16 Except where the matter is delegated to an officer, Area Planning Committees have the following functions for the areas:
- (i) Functions relating to town and country planning and development control as set out in Section A of Schedule 1 to the 2000 Regulations unless those matters fall within the remit of the County Planning Committee
 - (ii) Power to make limestone pavement order
 - (iii) Powers relating to the protection of important hedgerows
 - (iv) Powers relating to the preservation of trees
 - (v) Powers relating to complaints about high hedges.
- 17 It should be noted that due to the boundaries, members representing the electoral divisions of Deerness, Esh and Witton Gilbert, Trimdon and Thornley, and Willington and Hunwick would be classed as local members for two area planning committee areas as opposed to one.
- 18 At the annual meeting of Council, members agree to appoint the committees, and determine the allocation of seats to political groups represented on the Council on Committees in accordance with the provisions of Sections 15 and 16 of the Local Government and Housing Act 1989.
- 19 Section 15 of the 1989 Act (Duty to Allocate Seats to Political Groups) sets out the requirements as to political proportionality on Council bodies and requires the Council, in allocating seats on committees and sub-

committees of the Council to political groups, to give effect, so far as practicable, to the following four principles:

- (a) that not all seats on the committee/sub-committee are allocated to the same political group;
- (b) that the political group having a majority of seats on the Council should have a majority on each committee and sub-committee;
- (c) that, subject to (a) and (b) above, the number of seats on the Council's committees and sub-committees allocated to each political group, bears the same proportion to the total number of such committee/sub-committee seats as the number of members of that group bears to the membership of the full Council, and
- (d) that, subject to (a) to (c) above, seats will be allocated on each committee and sub-committee in the same ratio as exists on the full Council.

20 Section 16 of the 1989 Act (Duty to Give Effect to Allocations) requires the Council to give effect to the allocations determined in accordance with the wishes of the relevant group.

21 These principles are applied to all committees including the four planning committees. In each case the determination of seats has followed the principles of rounding up or down, and negotiation takes place with group leaders to determine the final allocation.

22 In relation to the Area Planning committees where membership is split between local members and those for the rest of the county, once the total allocation of seats to groups on an area committee is achieved, the issue arises in then determining whether those seats are for local members, or members from the rest of the county. Giving effect to allocations can be challenging where a group has a seat but not a local member to take up that seat.

23 The split is achieved through discussion with group leaders and negotiation and allocated as fairly as possible bearing in mind the numbers of seats to groups and number of members that would fall into the category of local members for that committee area. Alternative ways have been looked at determining the split of allocation however there is no calculated formula in achieving this.

- 24 Officers were asked to consider whether seats can be allocated to local members rather than members from across the County. It is understood that there is less appetite from members to sit on an area planning committee which is outside of their local area. The arrangements have also been criticised on occasion by the public who do not consider it appropriate for local planning matters to be determined by Councillors from outside the area.
- 25 A benchmarking exercise was undertaken with councils in the region, and with other Unitary Authorities which have similar population size. Of the 10 responses received (17 authorities contacted) there is no such restriction on allocation to seats to members from a geographical area. All committee seats are allocated on political balance only.
- 26 Constitution Working Group met on 6 December 2021 and agreed to recommend that Council change its arrangements so that members are appointed to Area Planning Committees based on their political affiliation in accordance with the political balance rules only, rather than an additional criteria relating to whether they are a local or county member of the area that they represent. This is the approach adopted in respect of appointments to other Regulatory Committees such as Highways and Licensing, and can be seen from the benchmarking exercise with other authorities.

Article 4 – The Full Council – D: Chief Officer Appointment Committee

- 27 Under the Openness and Accountability in Local Pay guidance, issued by the Secretary of State under section 40 of the Localism Act 2011, it provides that elected members should be offered the opportunity to vote on large salary and severance packages before they are offered in respect of a new appointment.
- 28 For the purposes of the guidance, salary packages includes salary, any bonuses, fees or allowances routinely payable to the appointee and any benefits in kind. The Secretary of State consider that £100,000 is the appropriate level for that threshold to be set (this is consistent with the provisions in relation to exit packages) and currently such proposals are presented to full Council.

- 29 It is proposed that Council delegates this responsibility to the Chief Officer Appointment Committee (COAC) and that the decision of the COAC is reported for information at the next convenient Council meeting.
- 30 Since Council dates are set annually in advance waiting to present proposals can cause delays in the recruitment process and the operational delivery of Council functions. The proposed change will allow a COAC to be convened quickly giving the requisite five clear days' notice which will enable such staffing matters to be considered more quickly, whilst still ensuring that members are able to vote on them.
- 31 The terms of reference for COAC will be amended to reflect this proposal at Article 4, paragraph D and this is shown at Appendix 2.

Article 6 – The Executive

- 32 Article 6 covers the appointment of the Leader at the annual meeting of Council following an election and how duties of the Leader are discharged in the event that there is a vacancy for the position of Leader. However, Article 6 does not provide for the appointment of a new Leader should a vacancy arise mid-term. It is therefore proposed to amend Article 6 to enable the appointment of a Leader at an ordinary meeting of Council following a casual vacancy arising.
- 33 Article 6 is also silent on how a new Leader is appointed in the event that the Leader is removed by motion on notice to Council (in accordance with Council Procedure Rules). This scenario is provided for under section 91 of the Local Government Act 1972, which states that where Council passes a resolution to remove the Leader, a new Leader is to be elected at the meeting at which the Leader is removed from office or at a subsequent meeting. It is therefore proposed to update Article 6 to reflect the legislative position for completeness.
- 34 Article 6 sets out when vacancies in the office of Leader and Deputy Leader arise. Reference is made to them being suspended from being a councillor under Part III of the Local Government Act 2000. However, these provisions were repealed by the Localism Act 2011 so these references are to be deleted. The proposed changes to Article 6 are shown at Appendix 3 of this report

Part 3 - Delegations to Officers

- 35 There are a small number of technical changes that have been made to the scheme of delegations, to reflect the organisational changes and the work within the respective Directorates.
- 36 The Head of Legal and Democratic Services has delegated authority to make technical changes to the Constitution and as such the scheme of delegations will be updated to ensure that the work within each Directorate are accurate and reflect the staffing structures. These have not been reproduced for the purpose of this report.
- 37 The Resources Directorate and Regeneration, Economy and Growth Directorate are consulting on Heads of Service restructures which will be implemented after the 1 April 2022. The changes to the scheme of delegation arising from the restructures are anticipated to be technical changes and the Head of Legal and Democratic Services will exercise her delegated authority to make the technical in year changes which includes to updates to the Constitution to reflect decisions of the Council, other Council bodies, to reflect changes in legislation and to correct inaccuracies.

Table 3 – Corporate Director for Regeneration, Economy and Growth

- 38 It is proposed that the delegation for the Head of Corporate Property and Land is amended in respect of approving the principle of acquiring property at a price not exceeding £100,000. The proposed change is to increase the limit to £250,000 to reflect market conditions. The change will appear at the relevant paragraph within Table 3.
- 39 Similarly, it is proposed to incorporate a new financial limit of £250,000 to the existing delegation for the Head of Corporate Property and Land to negotiate the acquisition of easements, rights of way, wayleaves, licences, covenants and consents for the benefit of Council land and property. The change will appear at the relevant paragraph within Table 3.
- 40 It is proposed that the scheme of delegation for the Head of Development and Housing is updated to reflect the work of the Council in providing Council housing. This incorporation ensures that there are clear and specific delegations in respect of the work of the Council as a local

housing authority. The responsibilities relate to the day to day management of housing stock such as the granting and termination of tenancies and licences, providing consents of succession, assignment and mutual exchanges. The proposed changes are shown at Appendix 4 of this report. The responsibility for functions within Article 6 will also be updated to reflect that the Portfolio Holder of Recourses, Investment and Assets will include Council housing.

- 41 It is also proposed that the amendment to the scheme of delegation in respect of planning matters agreed 22 May 2020 and reported to Council on 21 October 2020 is removed.
- 42 Due to advice from central government regarding social distancing during the Covid-19 pandemic, there were restrictions on meetings of the County Council or any of its committees from 18 March 2020 and this led to a backlog of planning applications requiring determination.
- 43 The Chief Planner in his March 2020 Planning Update Newsletter encouraged Authorities to “consider delegating committee decisions where appropriate.” To assist the council to meet statutory timeframes in respect of determining applications and to provide some certainty to business, it was agreed that all matters are delegated to the Interim Corporate Director of Regeneration, Economy & Growth other than those which the Head of Development and Housing considers are likely to have a significant impact on the environment or are by their nature particularly controversial or those which have been properly called in by Member or Local Council.
- 44 This arrangement has been kept under review which was introduced where planning committees were unable to be convened due to exceptional circumstances (in this instance the pandemic). In light of the lifting of the restrictions and the reinstatement of meetings in person it is considered appropriate to remove the emergency provisions. The proposed change is shown at Appendix 5 of this report.

Council Procedure Rules

- 45 The Council Procedure Rules require that written notice of every motion, must be delivered to the Head of Legal and Democratic Services not later

than 5.00 p.m. on the seventh working day before the Council meeting at which it is to be considered.

- 46 It is proposed that the Council Procedure Rules stipulate the email address where the written notice is to be sent if by electronic mail to a general mailbox monitored on behalf of the Monitoring Officer. An extract of the Council Procedure Rules showing the proposed update is shown at Appendix 6.

Executive Procedure Rules

- 47 The Executive Procedure Rules (EPRs) make provision for members of the public to ask questions of members of the Cabinet on matters of concern or interest, during the first formal item of business at every ordinary cabinet meeting.
- 48 Members of the public may also ask questions of members of the Cabinet on reports that are to be considered by the Executive which are listed on the agenda for that meeting.
- 49 The deadline for public questions is midday three working days before the day of the meeting (the Friday before the meeting on a Wednesday).
- 50 In respect of questions from Members, the rules provides that “there is no general right for non-cabinet members to address Cabinet at their meetings, however if the decision to be made affects their division, or they have some other relevant consideration this may be accepted subject to rule 2.7.2.
- 51 Rule 2.7.2 requires that a member wishing to ask a question must provide the question to the Head of Legal and Democratic Services no later than 2pm, two working days before the day of the meeting (Monday before the meeting on a Wednesday). They must indicate their reason for asking the question. The Head of Legal and Democratic Services in consultation with the Leader of the Council will determine whether the question can be asked.
- 52 Rule 2.8.1 deals with the scope of questions. The Head of Legal and Democratic Services may reject a question from the public if it does not relate to a matter of concern or interest.
- 53 With regard to questions on reports, the rules provide that the Head of Legal and Democratic Services may reject a question from the public or a member if it:
- (a) is not about a matter for which the Executive is going to consider an item on the agenda for the meeting;

- (b) is defamatory, frivolous or offensive;
- (c) is vexatious or abusive;
- (d) is substantially the same or similar to a question which has been put at a meeting of the Executive in the past six months;
- (e) requires the disclosure of confidential or exempt information;
- (f) is lengthy, or a speech;
- (g) relates to a matter which is of purely personal concern to an individual or family members;
- (h) relates to court action or threatened court action that the person/group are taking against the Council;
- (i) if a request for compensation;
- (j) contains a statement which is untrue
- (k) is an unintelligible question.

54 Questions are asked in the order in which they were received and at the time the agenda item is being considered. The Leader will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, a written reply will be given after the meeting. A restriction of 5 minutes per question will be applied, except at the discretion of the Leader.

55 Unless the Leader decides otherwise, no discussion will take place on any question.

56 There has been an increase in the number of questions being submitted by Members. During this municipal year, in September 2021 three questions were asked by a Member on behalf of the Member who submitted the question and five in October 2021. In some cases, the member submitting the question explained why they were unable to attend (prior commitment/funeral) but others did not.

57 Given the volume of questions being received since the election, often close to the deadline (2pm on the Monday before the meeting) it is becoming challenging for them to be reviewed to check that they are permitted under the rules and for responses to be prepared.

58 Proposed changes to the Executive Procedure Rules are shown at Appendix 7. It is suggested that the deadline for Member questions is amended to be consistent with the deadline for public questions i.e. noon three working days before the meeting. This would provide more time for

the Head of Legal and Democratic Services to review the questions and consult with the Leader of the Council as appropriate and for responses to be prepared.

- 59 The Constitution states that questions should be submitted to the Head of Legal and Democratic Services. Historically, members have used a dedicated email address for Cabinet questions: cabinetquestions@durham.gov.uk. It is suggested that the EPRs are updated to show the generic email to be used for questions to be submitted.
- 60 It is also recommended that the EPRs are amended to clarify the requirement that Members state their reason for asking the question. This requirement would perhaps be more helpful if it read “Members state the capacity in which they are asking the question (e.g. as Ward Councillor; Committee Member, Shadow Portfolio Holder, etc).

Contract Procedure Rules

- 61 The Contract Procedure Rules (CPRs) form part of the Constitution of the Council. The Constitution is updated annually, in a review process which runs from December to March. As part of this process Corporate Procurement is required to review the CPRs and put forward any amendments that may be required to ensure that the rules reflect the current practice, guidance and relevant legislation. The proposed changes appear at Appendix 8 of this report.
- 62 The key changes are summarised as follows:
- Additional points added to Rule 5 contracts and/or payments that are exempt from the CPRs:
 - Handling charge fees related to penalty charge notices issued by the Council.
 - Creation of exemption for imprest accounts related to contracts compliantly procured under the CPRs and Public Contract Regulations 2015.
 - Advertising of statutory notices (such as planning notices).
 - Addition to point ‘x’ to include the Council’s duty to provide services under the Homelessness Reduction Act 2018.
- 63 Some overall minor updates have been made with regard to corrections of previous typing errors or formatting, these are not significant, and therefore have not been itemised.

- 64 Officers considered whether there was any need to amend the competitive procurement threshold. On balance it is felt that retaining the £5,000 threshold is sensible at the present time as this permits appropriate control of spend and visibility of contracts awarded.
- 65 There are expected changes in 2022 relating to the new Procurement Bill and Health Care Bill which will have implications to public contracting rules on receiving Royal Assent. The Head of Legal and Democratic Services will make any in-year changes required under her delegation referred to at paragraph 34 above.

Protocol on Member Officer Relations

- 66 The Council has previously adopted a Consultative Charter (the Charter), which sets out principles of communication and the provision of information to elected Members.
- 67 The Charter used to form part of the Constitution until it was taken out in May 2018 following a review, which sought to streamline the Constitution and remove repetition. It has remained available on the Council's intranet.
- 68 The Council has also adopted a Protocol on Member Officer Relations (the Protocol), which was retained within the Constitution during the 2017/18 review although it has been amended during subsequent reviews. It also contains provisions relating to the provision of information to elected Members.
- 69 There have been recent examples where local members have reported that they have not been informed of matters relating to their areas. Officers have therefore been asked to consider whether the Charter can be re-introduced as part of the Council's Constitution.
- 70 On 21 October 2021, Constitution Working Group considered the Charter and the Protocol and requested that the Protocol be amended so that it fully reflected the provisions of the Consultative Charter. They also requested some amendments to clarify the type of information that local members should be provided with and the circumstances in which these are provided. The proposed changes to the Protocol is shown at Appendix 9.

Financial Procedure Rules

71 The Financial Procedure Rules have been reviewed with no substantive changes to be made. A minor amendment is proposed to remove the date of the Code of Practice and replace with the words Code of Practice in place at the time of application.

Background papers

None

Other useful documents

None

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Appendix 1: Implications

Legal Implications

The statutory requirements in relation to the Council's Constitution are set out at paragraph 5 in the report.

Finance

The review of the Constitution has no financial implications.

Consultation

Relevant officers have been consulted on the proposed changes to the Constitution. The report will be presented to Cabinet on 6 April and Council on 25 May 2022.

Equality and Diversity / Public Sector Equality Duty

There are no equality and diversity implications arising out of this report. The Constitution is available in an accessible format. The annual reviews ensure that relevant provisions have regard to the Council's obligations under the public sector equality duty.

Climate Change

None specific within this report.

Human Rights

None specific within this report.

Crime and Disorder

None specific within this report.

Staffing

None specific within this report.

Accommodation

None specific within this report.

Risk

None specific within this report.

Procurement

None specific within this report.

Appendix 2: Chief Officer Appointment Committee

Comprised of 11 Members of the Council including the Leader and Deputy Leader, the Chief Officer Appointment Committee will expand to include 2 voting co-opted Independent Persons in the case of proposed disciplinary action against a Statutory Officer, and shall be responsible for:

- (i) Appointment of the Chief Executive (subject to confirmation by the full council) and chief officers and associated functions under Section 112 of the Local Government Act 1972 in relation to those officers.
- (ii) Dismissal of Chief Officers, subject to the provisions contained in the Officer Employment Procedure Rules regarding the dismissal of Statutory Officers.
- (iii) Appointment and dismissal of the Director of Public Health (committee to act as advisory appointments committee, the appointment is subject to the approval of the Secretary of State for Health)
- (iv) To make recommendations to Full Council regarding a decision to dismiss a Statutory Officer.
- (v) Officer appointments where the salary package is £100,000 or more which will be reported to the next convenient meeting of Council for information.
- (vi) Officer severance packages of £100,000 or more which will be reported to the next convenient meeting of Council for information.

Appendix 3: Article 6 – The Executive

6.1 Deputy Leader

The Deputy Leader will hold office until the end of the term of office of the Leader, unless before that date:

- (a) they resign from office; or
- (b) ~~they are disqualified from being a councillor; or they are suspended from being a councillor under Part III of the Local Government Act 2000 (as amended) (although they may resume office at the end of the period of suspension unless they have, during that period, been removed from office by the Leader); or~~
- (c) they are no longer a councillor; or
- (d) they are removed from office by the Leader.

6.2 Other Executive Members

Other Executive Members will hold office for such period as the Leader shall determine unless during that period:

- (a) they resign from office; or
- ~~(b) they are suspended from being councillors under Part III of the Local Government Act 2000 (as amended) (although they may resume office at the end of the period of suspension unless they have, during that period been removed from office by the Leader); or~~
- (c) they cease to be councillors.

6.3 Executive Support Members

- (a) The Leader may appoint and remove at their discretion up to 10 councillors to be Executive Support Members, to support and assist the Executive as a whole or individual members of the Executive.
- (b) Executive Support Members may not be members of any Overview and Scrutiny Committee, or Audit Committee or the Chair of the Council.
- (c) Executive Support Members may not substitute or represent an Executive Member at meetings of the Executive or a committee of the Executive, or require an item to be placed on the agenda of such meetings; nor may they exercise any executive function delegated to an Executive Member.

6.4 Vacancies or Inability to Act

- (a) Where a vacancy occurs in the office of Deputy Leader, the Leader will appoint another person in their place;
- (b) If for any reason the Leader is unable to act, or the office of Leader is vacant, the Deputy Leader will act in their place;
- (c) if for any reason:
 - i) the Leader is unable to act or the office of Leader is vacant; and
 - ii) the Deputy Leader is unable to act or the office of Deputy Leader is vacant;

the Executive will act in the Leader's place or arrange for a member of the Executive to act in their place.

- (d) In the case of a vacancy of the Leader, an election to fill the vacancy shall be held not later than the next ordinary meeting of the Council held after the date on which the vacancy occurs, or if that meeting is held within 14 days after that date, then not later than the next following ordinary meeting of the Council. The Proper Officer may convene a meeting of the Council for such an election
- (e) If the Council passes a resolution to remove the Leader from office, it will elect a new Leader at the meeting at which the Leader is removed or at a subsequent meeting.

6.5 Responsibility for functions

- (a) The Leader may discharge any executive function of the Council.
- (b) The Leader may arrange for the discharge of any executive function
 - i) by the Executive;
 - ii) by another member of the Executive;
 - iii) by a committee of the Executive, or
 - iv) by an officer of the Council
- (c) The table below indicates how the Leader has allocated portfolios (lead responsibilities) for particular executive functions among individual Members of the Executive. Portfolio holders do not have delegated powers.

Appendix 4: Head of Development and Housing

1. The management of all matters required to ensure the Council carries out its statutory duties as a local housing authority as prescribed in:
 - Housing Act 1985
 - Housing Act 1996
 - Housing Act 2004
 - Local Government and Housing Act 1989
 - Localism Act 2011
 - Housing and Planning Act 2016
 - The Regulatory Framework set out by the Regulator for Social Housing; and
 - Any other relevant statute or government guidance relating to the management and provision of social housing and related facilities.
2. In conjunction with the Head of Corporate Finance and Commercial Services maintain a Housing Revenue Account in accordance with sections 74 – 78 of the Local Government and Housing Act 1989.
3. To exercise the Council's functions in respect of the preparation and development of appropriate strategies and plans for the Council's housing stock, including the Housing Investment Programme and Cyclical Maintenance Programmes including the construction, repair, maintenance, modernisation and redevelopment and renewal of properties including (but not limited to) house condition surveys and the preparation and implementation of programmes of repair and improvement;
4. To prepare and keep under review from time to time the Council's Tenancy Strategy in line with the requirements of the Localism Act 2011.
5. In consultation with the Head of Corporate Finance and Commercial Services to take any decisions on the selection of property where it is appropriate to charge an affordable rent in line with the Regulator for Social Housing's Rent Standard.
6. Exercising the management of functions of the Council in relation to dwellings owned by the Council but not held under Part IV of the Housing Act 1985.

7. Without prejudice to the foregoing delegations, to exercise the following functions of the Council:
 - a. authorising the allocation and granting of tenancies and licenses in accordance with the Council's allocation scheme;
 - b. approving rents in specific cases;
 - c. serving and enforcing notices, to quit, of termination or seeking possession;
 - d. maintaining properties and estates;
 - e. The management of empty properties;
 - f. granting consent or otherwise to the succession or assignment of a tenancy where statute allows and in line with the Council's policy;
 - g. granting consent to mutual exchanges, imposing conditions to that consent where appropriate or refusing such consent with reference to Schedule 3 of the Housing Act 1985
 - h. granting consent, imposing conditions to that consent where appropriate or otherwise withholding tenants' requests to carry out improvements or alterations in accordance with the Housing Act 1985 sections 97-99
 - i. granting consent or otherwise in any other matter where the Council's tenancy agreement including introductory tenancy agreement or licensees requires that permission is sought by the tenant or licensee;
 - j. authorising compensation for tenants' improvements be they statutory or discretionary (Housing Act 1985 sections 99a and 100);
 - k. settling any claims by tenants for disrepair,
 - l. taking action under sections 1 and 115 of the Crime and Disorder Act 1998, Part V of the Housing Act 1996, Anti-Social Behaviour Act 2003 and Housing Act 2004;
 - m. taking action to secure the eviction of trespassers;
 - n. undertaking consultation with tenants and / or social landlords where required by statute or government guidance or where otherwise appropriate e.g. section 105 of the Housing Act 1985; and

- o. authorise the granting of licenses for the use of garages, reviewing license conditions and subsequent termination of licenses where necessary.
8. Carry out the Council's statutory responsibilities under Part V of the Housing Act 1985 (Right to Buy).
 - Authorising service of statutory notices, admitting / denying the right to buy, withdrawing or requiring completion.
 - Authorising sales of freehold or otherwise granting of long leases
9. In consultation with the Head of Legal and Democratic Services, enforcing covenants including those relating to repayment of discount, use of shared areas and letting of whole.
10. In consultation with the Head of Legal and Democratic Services
 - a. Agreeing variations to the terms of individual leases.
 - b. Granting/refusing permission to requests on various matters, by leaseholders, where the lease requires consent of the landlord.
 - c. Authorising legal action for breaches of covenants.
11. Determining the application of covenants applied in relation to the Right to Buy under section 157 of the Housing Act 1985 relating to homes in areas covered by National Parks, Area of Outstanding Natural Beauty and Designated Rural Areas relating to:
 - a. Restriction of onward sales to people who have lived or worked in the area for a period of 3 years, or
 - b. Exercising the Council's first right of refusal to repurchase the property within first 10 years following the Right To Buy (RTB) sale.
12. Exercising the functions of the Council under Part X of the Housing Act 1985 and Part IV, Chapter 3, and Part VII of the Housing Act 2004 in relation to overcrowding.
13. Exercising the functions of the Council under the Protection from Eviction Act 1977, the Protection from Harassment Act 1997 and all other enabling powers to regulate and control private landlords.
14. Exercising the functions of the Council under the Landlord and Tenant Act 1985 (landlord's obligations).

15. In consultation with the Head of Corporate Finance and Commercial Services, write off irrecoverable debt due from current and former tenants in compliance with the Council's write off policy.
16. In consultation with the Head of Corporate Finance and Commercial Services, write off any un-refundable Credit balances associated with untraceable former tenants in compliance with the Council's write off policy.
17. To determine disturbance payments and applications for home loss payments in accordance with the Land Compensation Act 1973.
18. Undertaking and determining reviews under the Introductory Tenants (Review) Regulations 1997.
19. To make decisions under Access to Personal Files (Housing) Regulations 1989.
20. To authorise payments to tenants for decoration and removal expenses or approve ex-gratia payments in appropriate circumstances.
21. Agreeing terms with private landlords and registered social landlords to lease accommodation for the purposes of providing temporary housing for homeless households.
22. To consider and determine any matters relating to the Housing Act 1985 (as amended in respect of Right to Buy including the repayment of discount and right of first refusal.
23. To ensure compliance with all Council policies relating to the provision and management of Council owned residential properties. Council to make changes to all such policies where provision of service would be improved, or necessity arises or to recommend such changes to Cabinet where appropriate.
24. To establish such arrangements as appropriate to ensure effective engagement of tenants and leaseholders in the setting, monitoring and review of housing and related services including holding meetings, organising consultation events, surveys, and newsletters.
25. To consider and respond to requests from Durham Police in respect of the designation of dispersal areas under the provisions of the Anti- Social Behaviour Crime and Policing Act 2014.

Appendix 5: Extract of Table 3 - Delegation to the Corporate Director for Regeneration, Economy and Growth

Specific and non-executive delegations

1. To review decisions made by the Head of Property and Land relating to the list of assets of community value.

~~1A. In consultation with the Chair of the relevant Committee (or in their absence, the Vice Chair of the relevant Committee) and the Head of Legal and Democratic Services (or their nominated representative), to determine the following matters:~~

~~a) Major developments (excluding s73 Reserved Matter applications and Review of Mineral Planning Permissions) comprising:~~

~~(i) major residential developments (10 or more dwellings or a site area of 0.5ha or greater) except where the application is for a substitution of house types on a scheme already benefitting from an extant planning permission;~~

~~(ii) development of more than 20,000m² of floor space or a site area of 4ha or greater comprised in Use Class B1 (Business) and/or Use Class B2 (General Industrial) and/or Use Class B8 (Storage or Distribution) or waste and waste related development; or~~

~~(iii) development not falling within (i) and (ii) above, where the floor space is 1000m² (gross) or more or the site area is 1 hectare or more except applications where the use or building would be for agriculture or personal equestrian use;~~

~~b) those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days recommended for refusal which involve the creation of 10 or more full time or equivalent jobs;~~

~~c) those applications for planning permission or notifications which have a relevant timescale of more than 35 days where there is a significant departure from Development Plan policy and which would be required to be the subject of a notification to the Secretary of State.~~

1B. To discharge any function of the Executive in relation to communication.

The following matters are, in addition, delegated to the Head of Development and Housing:

2. To exercise the Council's functions in relation to housing including:
 - a) the determination of any applications for grant and/or housing assistance loans;
 - b) the exercise of the Council's enforcement powers under the legislation relating to private sector housing;
 - c) to investigate and determine all applications made to the Council under its powers and duties to deal with homelessness;
 - d) to authorise any expenditure required in the exercise of the Council's functions to assist the homeless.

3. To carry out the Council's functions in relation to permanent Gypsy, Roma and Traveller sites, including allocation of sites, site management, rent recovery and tenant support.

4. ~~Subject to paragraph 1A,~~ To determine all forms of planning and other applications and all notifications submitted under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 or under any related principal or secondary legislation, except the following:

- a) those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days that any Member of the Council requests be determined by the Planning Committee (such must be made in writing to the Head of Development and Housing specifying material planning grounds on which the request is made and received by the Head of Development and Housing within 21 days of publication on the weekly list or the initial publication of the proposal (site notice / press notice / service of neighbour consultation letters, whichever is the latest);
- b) those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days where a Member of the Council or an officer of the Planning Development Service or their spouse/partner or children has an interest in the property or land which is the subject of the application or notification and where there is an objection to the application or notification;
- c) those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days

where, despite a Town or Parish Council having expressed objection or support, the officer is minded to recommend the application or notification on material planning grounds contrary to the wishes of the local council and:

- i) the local council have made a specific request in writing for the application or notification to go before a planning committee; and
- ii) the local council have confirmed their intention to attend the planning committee to make representations on the application; and
- iii) the written request is received by the Head of Development and Housing within 21 days of publication on the weekly list or the initial publication of the proposal (site notice / press notice / service of neighbour consultation letters, whichever is the latest);

d) Major developments (excluding s73 Reserved Matter applications and Review of Mineral Planning Permissions) comprising:

(i) major residential developments (10 or more dwellings or a site area of 0.5ha or greater) except where the application is for a substitution of house types on a scheme already benefitting from an extant planning permission;

(ii) development of more than 20,000m² of floor space or a site area of 4ha or greater comprised in Use Class B1 (Business) and/or Use Class B2 (General Industrial) and/or Use Class B8 (Storage or Distribution) or waste and waste related development; or

(iii) development not falling within (i) and (ii) above, where the floor space is 1000m² (gross) or more or the site area is 1 hectare or more except applications where the use or building would be for agriculture or personal equestrian use;

(e) those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days likely to have, in the opinion of the Head of Development and Housing, a significant impact on the environment or are by their nature particularly controversial;

f) those applications for planning permission, other applications and notifications which have a relevant timescale of more than 35 days recommended for refusal which involve the creation of 10 or more full time or equivalent jobs;

g) those applications for planning permission or notifications which have a relevant timescale of more than 35 days where there is a significant departure from Development Plan policy and which would be required to be the subject of a notification to the Secretary of State.

Appendix 6: Extract of Council Procedure Rules

10. MOTIONS ON NOTICE

10.1 Application of Rules

Rules 10.2 to 10.7 do not apply to motions on notice under rule 10.8.

10.2 Notice

Except for motions which can be moved without notice under Rule 11, written notice of every motion, must be delivered to the Head of Legal and Democratic Services not later than 5.00 p.m. on the seventh working day before the Council meeting at which it is to be considered. **The notice may also be given by electronic mail sent to motions@durham.gov.uk.**

10.3 Motion set out in agenda

Motions for which notice has been given will be listed on the agenda in the order determined by the Chair.

10.4 Scope

Motions must be about matters for which the Council has a responsibility or which affect the County.

Appendix 7: Executive Procedure Rules

2.7 Questions by Members

On reports to be considered by the Executive

2.7.1 A member of the Council may wish to ask questions of Members of the Executive on reports that are to be considered by the Executive which are listed on the agenda for that meeting. There is no general right for non Cabinet members to address Cabinet at their meetings, however if the decision to be made affects their division, or they have some other relevant consideration this may be accepted subject to rule 2.7.2

Notice of questions

2.7.2 A member wishing to ask a question must give notice by delivering the question in writing or by electronic mail to cabinetquestions@durham.gov.uk for the attention of the Head of Legal and Democratic Services at no later than ~~14.00 hrs 2 working days~~ noon 3 working days before the day of the meeting, and must ~~indicate their reason for asking the question~~ state the capacity in which they are asking the question (e.g Ward Councillor; Committee Member, Shadow Portfolio Holder, etc). The Head of Legal and Democratic Services in consultation with the Leader of the Council will determine whether the question can be asked.

Order of questions

2.7.3 Questions will be asked in the order notice of them was received, and at the time that the agenda item was being considered.

Asking the question at the meeting

2.7.4 The Leader will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, a written reply will be given after the meeting. A restriction of 5 minutes per question will be applied, except at the discretion of the Leader.

2.8 Questions

Scope of questions

2.8.1 The Head of Legal and Democratic Services may reject a question from the public if it:

- (a) does not relate to a matter of concern or interest; or The Head of Legal and Democratic Services may also reject a question from the public or a Member if it:
- (b) Subject to 2.8.1(a) above, is not about a matter for which the Executive is going to consider an item on the agenda for the meeting;
 - (c) is defamatory, frivolous or offensive;
 - (d) is vexatious or abusive;
 - (e) is substantially the same or similar to a question which has been put at a meeting of the Executive in the past six months;
 - (f) requires the disclosure of confidential or exempt information;
 - (g) is lengthy, or a speech;
 - (h) relates to a matter which is of purely personal concern to an individual or family members;
 - (i) relates to court action or threatened court action that the person or group are taking against the Council;
 - (j) is a request for compensation;
 - (k) contains a statement which is untrue;
 - (l) is an unintelligible question.

Record of questions

2.8.2 The Head of Legal and Democratic Services will immediately send a copy of the question to the Member to whom it is to be put. Rejected questions will include reasons for rejection.

The questions asked at the meeting and the responses will be referred to in the minutes of the meeting.

Written answers

2.8.3 Any question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Member to whom it was to be put, will be dealt with by a written answer.

Reference of question to the Executive

2.8.4 Unless the Leader decides otherwise, no discussion will take place on any question.

Appendix 8: Extract of Contract Procedure Rules

5. EXEMPTIONS

5.1 The following contracts and/or payments are exempt from these CPRs:

- (a) Contracts for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body which can perform the works. Such statutory undertakers include:
- i. British Telecom – specifically for telecoms infrastructure works.
 - ii. Network Rail – specifically for works affecting the railway infrastructure.
 - iii. Northern Gas Networks – specifically for gas supply infrastructure works.
 - iv. Northern PowerGrid – specifically for electricity infrastructure works.
 - v. Northumbria Water – specifically for water and sewerage infrastructure works.
 - vi. Highways England – specifically for works to the core road network under their management.
- (b) Statutory fees payable:
- i. to the Driver & Vehicle Licensing Agency and/or Drive & Vehicle Standards Agency (formerly VOSA).
 - ii. to the Disclosure & Barring Service.
 - iii. to the Care Quality Commission under section 85(1) of the Health and Social Care Act 2008.
 - iv. set by government for education or inter-agency adoption funding.
 - v. to Ofsted for the inspection of a school, children’s home, or other facility,
 - vi. for TV licenses in Council owned or operated premises.
 - vii. for Phonographic Performance Ltd or PRS for Music, for the playing of recorded music in public, or for the use of the musical composition and lyrics in that recording.

- viii. to NHS Business Services Authority for prescription charges.
- ix. for fees incurred for Parking Charge Notices issued by the Council.
- x. Fees payable to Public Health England with respect to the Child Death Notification Service.

(c) For the creation of imprest account relating to contracts let that have followed a compliant procurement process.

(d) Contracts for the carrying out of statutory public health funerals under the Part 3 of the Public Health (Control of Disease) Act 1984.

(e) Contracts for the purchase of newspaper advertising for statutory notices, and contracts for the purchase of broadcasting time, including for the placing of radio and television advertising.

(f) Contracts to provide sponsorship to events, awards schemes, or other promotional activity being organised by a third party.

(g) Fees payable in advance on an annual basis for publications, access to online information and membership fees, only delivered by the publishing body, and membership fees of a recognised industry body membership programme. Use of this exemption must be followed up with a Procurement Acceptance Report as detailed in Rule 19.

(h) Contracts for actors or performers to meet the specific requirements of an artistic, cultural, or performing arts event being organised by the council.

(i) Contracts of employment which make an individual a direct employee of the authority.

(j) A staff secondment, where an employee of another organisation shall work on a Council project, on a temporary basis, but where they will not become an employee of the Council.

NB: While the CPRs do not apply to staff secondments, authorisation to proceed must be obtained from Human Resources, and the terms of the secondment appropriately documented.

- (k) Contracts for legal representation by a lawyer (advocate, barrister, or solicitor) in arbitration or conciliation proceedings, judicial proceedings before the courts, tribunals or public authorities of an EU member state or third country or before international courts, tribunals or institutions.
- (l) Payments for legal advice given by a lawyer, or other expert opinion requested, in preparation for, or connected to, any of the proceedings mentioned in (k) above.
- (m) Payments for documents, document certification and authentication services, which may only be provided by notaries, or from the issuing authority, such as the General Registry Office, HM Passport Office.
- (n) Payments for legal services provided by trustees or appointed guardians or other legal services, the providers of which are designated by a court or tribunal.
- (o) Fees payable to Durham Constabulary to cover the cost of additional policing presence at public events or for temporary public safety purposes.
- (p) Appointment of independent planning inspectors nominated by the Royal Institute of Chartered Surveyors (RICS) under the NPIERS scheme.
- (q) Fees payable to a qualification awarding body for a professional or vocational qualification being undertaken by a Council Officer with the support of the Council.
- (r) Accreditation and membership, fees payable to an awarding or professional body for the accreditation or certification, or fees for services required to undertake a service being provided by the Council.
- (s) Fees payable for Royal Mail postage, including franking machine credits, and for financial transaction services required by the Council.
- (t) Agreements regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply), or:
- (u) The payment of grants to third parties.

NB: While grants are not covered by these CPRs, there are rules on the awarding of grants which do need to be observed. The Council cannot simply choose to treat a procurement as a grant in order to avoid conducting a competitive process. Officers should follow any guidance contained in the Advice Centre.

- (v) Where the Council is providing a payment processing facility to a non-profit body, and where this does not make the Council the accountable body for the contracts or transactions in question.
- (w) Payments for services with regard to high needs or special education (including maintained schools Communities of Learning and Behaviour Panels), social care, health, safeguarding, or urgent operational needs, if in the opinion of the relevant Corporate Director it is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this exemption by the relevant Corporate Director must be followed up with a Procurement Acceptance Report as detailed in Rule 19.
- (x) Those relating to residential and/or nursing care, or independent living services, to a person or persons to whom the Council has a duty or power to provide under the Care Act 2014, and other relevant legalisation relating to, **homelessness**, social care, health and safeguarding. Use of this exemption by the relevant Corporate Director must be followed up with a Procurement Acceptance Report as detailed in Rule 19.

Appendix 9 - Extract Protocol on Member Officer

8. Information and Advice

8.1 Requests for written information:

- (a) Members should be provided with adequate information about services or functions on which they may be called upon to make decisions or to scrutinise the decisions of others, or which affect their constituents. This information will normally be made routinely available by Officers in the form of reports, departmental plans, etc.. Members are encouraged to make use of existing sources of information wherever possible.
- (b) Written information supplied to a Member regarding the implications of current Council policies or containing statistical information about Council services may be copied to the relevant Cabinet Member.
- (c) The Leader of the Council, or Leader of any other political group, may request the Chief Executive or the relevant Corporate Director or Director, or other designated Officer, to prepare reports on matters relating to the authority for consideration by the group. Such requests must be reasonable and should not seek confidential information in relation, for instance, to casework or personal details of applicants for services.
- (d) Wherever possible, such requests will be met. However, if the Officer considers that the cost of providing the information, or the nature of the request is unreasonable or inappropriate, the request will be referred to the Chief Executive for determination, where necessary in consultation with the Leaders of the political group. Requests will also only be met where they comply with data protection or other legal requirements.
- (e) Officer reports to political groups should be limited to a statement of relevant facts, identification of options and the merits and demerits of such options for the authority. Reports should not deal with any political implications of the matter.

8.2 Briefings:

- (a) In order for them to discharge their responsibilities, Cabinet Members will be briefed by senior Officers (Corporate Directors, Director or Heads of Service) on service issues, proposals and policy development, either on an ad-hoc or regular basis, in accordance with the requirements of the Member involved.
- (b) The other political party groups may also have nominated Shadow Portfolio Holders and, if those leads so request, the relevant senior Officers will make themselves available to meet with them to brief them on service issues. The other political party groups should be aware that at times the amount of information that Officers can share with them may be limited due to issues of confidentiality.
- (c) The content of these informal briefing sessions shall remain confidential as between Officers and the political group concerned.

8.3 News Items:

When an event or development occurs in the city which has or will have a significant impact on the Council or city residents, the Chief Executive will ensure that the Leaders of all political groups are informed as soon as possible.

8.4 Ward Members:

- (a) Senior Officers should ensure that Ward Members are given information relevant to their ward where appropriate and in a timely manner. As well as Ward Members know when there has been a potentially significant incident in their ward, Ward Members should be notified about the following types of issue:
 - (i) Public consultation events affecting their wards;
 - (ii) Proposed changes to services sited within their wards;
 - (iii) Applications and proposals in their wards.
- (b) Ward Members should be invited by Officers to public events, such as openings, festivals etc. in their wards, regardless of political affiliation.

- (c) If Officers organise a public meeting about a specific ward issue, all the Ward Members should be invited and given as much notice as possible.
- (d) If Officers undertake consultation about specific ward issues, they should consult the Members for that ward at the start of the consultation.
- (e) Ward Members should be told in advance about anything which particularly affects their ward and which is potentially controversial.
- (f) Potentially significant or controversial issues may include but are not limited to:
 - (i) road closures whether planned or unplanned in an emergency (e.g. flooding);
 - (ii) removal of bus stops (temporarily or permanently)
 - (iii) removal of electric vehicle charging points.
 - (iv) issues affecting the community raised by MP's
 - (v) matters which have an impact on a local community.

8.5 Local Service Information

- (a) Information regarding local services is contained with the Members Handbook, which is provided to all Members during Induction / at the start of a new municipal year.
- (b) Information relating to specific Council services is published on the Council's website. If Members have queries in respect of services provided, these should be raised with Member Support / or the relevant Corporate Director in the first instance.

8.6 Petitions

- (a) Details of any petitions received, which relate to matters in a particular Electoral Division will be sent to the Local Members(s). Local Members will be kept informed on the progress / outcomes of such petitions.
- (b) Copies of all petitions and outcomes of petitions will also be provided to the Leader of the Council.

8.7 Officer attendance at Group Meetings:

- (a) The Leader of the Council or Leader of any other political group may ask the Chief Executive, Corporate Director or Director to give or arrange a private briefing for the party group on a matter of relevance to the Council.
- (b) Any briefings offered to or requested by a party group will be offered to the other party groups.
- (c) While Officers may attend political group meetings at which individuals who are not elected Members may be present, Members need to understand that those Officers' ability to share confidential information with the Group may be limited. In particular, Officers will not be able to share personal information with third parties present if to do so would cause the Council to breach the data protection requirements.
- (d) Officers must not attend regional and / or constituency party political meetings.
- (e) Decisions at group meetings are not Council or Cabinet decisions and party groups do not have any delegated authority to make formally binding decisions.

8.8 Advice for Members with special responsibilities:

- (a) The Chair, Cabinet Members and Committee Chairs can ask the Chief Executive, Corporate Directors, Director and Heads of Service for extra background information and advice on different courses of action.
- (b) Although these Members have additional responsibilities and different relationships because of their more frequent contact with Officers, these Members must still respect the impartiality of Officers. This includes not asking them to undertake work of a party political nature, or do anything which would prejudice that impartiality.
- (c) The Leadership of minority political groups can ask the Chief Executive, Corporate Directors, Director or Heads of Service for background information or more details about items coming to the next meeting of a

Committee or Cabinet. The appropriate Chair or Cabinet Member will be entitled to receive the same information.

- (d) Party Group Leaders can ask for advice on presenting their budget in a correct and accurate form. This will be given in confidence.

8.9 Correspondence received by Members and Officers

- (a) where correspondence is sent to both Members and Officers, Officers will agree a single response with the relevant Members to ensure consistency of approach.