**Constitution**

**Article Seven: Decision Making**

* 1. The Council is responsible for a range of functions and who can take decisions on those functions depends on the type of function. This Article outlines the different types of function and the principles that must be applied to decisions taken in relation to them.

**Responsibility for Functions**

* 1. All Council functions fall into one of three categories:
* Executive Functions
* Non-Executive Functions
* Local Choice Functions.

The category a function falls under determines which individual or body can take decisions relating to that function.

* 1. **Executive Functions**

The Local Government Act 2000 defines all functions of the Council as being Executive except:

* functions that legislation states are not to be the responsibility, or sole responsibility, of the Executive or
* functions that legislation states are Local Choice Functions (see paragraphs 7.7 and 7.8).
  1. The Leader of the Council is responsible for all Executive Functions and can choose to discharge them him/herself or to delegate them. Executive Functions and the decisions related to them can be delegated to:
* Executive Board or another Executive Committee, including Joint Committees
* Individual Portfolio Holders
* Officers.

Further information on the arrangements for Executive Decision making can be found in Article 10 – Executive Arrangements and in Governance Framework Document G – Delegations to Officers.

* 1. **Non-Executive (Council) Functions**

Non-executive Functions are powers and duties that:

* legislation states are not to be the responsibility of the Executive or
* are Local Choice Functions that the Council has designated as Non-Executive.
  1. Full Council is responsible for all Non-Executive Functions and can discharge them itself or delegate them to:
* Committees of Council
* Officers.

There are some Non-executive Functions that can only be the responsibility of Full Council and cannot be delegated to another body. These are identified in the terms of reference for Full Council in Article Nine – Council (Non-Executive) Functions and Committees. The terms of reference for Council Committees can also be found in Article Nine and Non-executive delegations to officers can be Found in Governance Framework Document G – Delegations to Officers.

* 1. **Local Choice Functions**

Local Choice Functions are functions which may, but do not have to, be the responsibility of the Executive and it is for Full Council to decide whether they are Executive or Non-Executive. Local Choice Functions are mainly set out in Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the “Functions Regulations”).

* 1. Having regard to government guidance, Full Council has decided to designate the Local Choice Functions as Executive or Non-Executive as set out in the following Table.

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| **Local Choice Function** | **Status of Function** |
| 1. Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of the Local Authorities Functions Regulations or specified within the terms of reference of any non-executive committee. | Executive |
| 2. The determination of an appeal against any decision made by or on behalf of the authority (other than employee dismissals). | Non-Executive |
| 4. The making of arrangements pursuant to section 52 of the Education Act 2002 and the Education (Pupil Exclusions and Appeals (Maintained Schools) (England) Regulations 2002 and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008 (making arrangements for appeals against exclusion of pupils). | Non-Executive |
| 5. The making of arrangements pursuant to section 94(1) and (4) of, and Schedule 24 to, the Schools Standards and Framework Act 1998 (making arrangements for admission appeals). | Non-Executive |
| 6. The making of arrangements pursuant to section 95(2) of, and Schedule 25 to, the Schools Standards and Framework Act 1998 (children to whom section 87 applies: appeals by governing bodies). | Non-Executive |
| 7. The making of arrangements under section 20 (questions on police matters at council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority. | Non-Executive |
| 8. The making of appointments under paragraphs 2 to 4 (appointment of members by relevant councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996. | Non-Executive  Full Council appoint City Councillors to the Joint Committee for appointments to the Nottinghamshire Police Authority. |
| 10. Any function relating to contaminated land. | Executive |
| 11. The discharge of any function relating to the control of pollution or the management of air quality. | Executive |
| 12. The service of an abatement notice in respect of a statutory nuisance. | Executive |
| 13. The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area. | Executive |
| 14. The inspection of the authority's area to detect any statutory nuisance. | Executive |
| 15. The investigation of any complaint as to the existence of a statutory nuisance. | Executive |
| 16. The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land. | Executive |
| 17. The making of agreements for the execution of highways works. | Executive |
| 18. The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. | Executive |
| 19. The appointment of any individual:   1. to any office other than an office in which he/she is employed by the Council 2. to any body other than: 3. the Council 4. a joint committee of two or more authorities or 5. to any committee or sub-committee of such a body, and the revocation of any such appointment. | Executive |
| 20. The making of agreements with other local authorities for placing staff at the disposal of those other local authorities. | Executive |
| 22. Functions under sections 106, 110, 111, 113 of the Local Government and Public Involvement in Health Act 2007 relating to local Area Agreements | Executive |
| 23. Unless specifically catered for elsewhere, the adoption or approval of any plan or strategy relating to the Licensing and Regulatory functions listed in Part B of Schedule 1 of the Functions Regulations 2000. | Non-Executive |

**Principles of Decision Making**

* 1. It is in the public interest and in the interest of minimising the risk of legal challenge to the Council that decisions are taken properly. These principles, which apply to all decisions including delegated decisions and reports to committees, will help to ensure that decision makers are provided with necessary information to support them in taking good decisions.
  2. Decisions must be taken in accordance with:
* statute
* other legal requirements, including the principles of public law, the Human Rights Act 1998, Equality Act, statutory guidance and statutory codes of practice
* this Constitution, particularly the paragraphs set out below, Article 9 – Council (Non-Executive) Functions and Committees, Article 10 – Executive Arrangements, Article 13 – Access to Information Procedure Rules, Article 17 – Financial Regulations and Article 18 Contract Procedure Rules
* the Council’s revenue and capital budgets, subject to any variation which is permitted in Article 17 – Financial Regulations
* the Council’s policy framework
* delegations made by:
  + Full Council
  + the Leader of the Council
  + Executive Board or other Executive committees
  + a Portfolio Holder,
  + a Council Committee or sub-committee
  + officers.

* 1. It is important that, with all decisions taken, the decision maker can demonstrate that:

1. the risks associated with the decision have been fully taken into account and mitigated where possible
2. there was adequate evidence upon which to base a decision
3. all relevant matters were fully taken into account in reaching the decision
4. the decision maker did not pre-determine the decision
5. the decision maker consulted with and took professional advice from all relevant officers including the Monitoring Officer and the Chief Financial Officer, as appropriate, and had sufficient regard to that advice (see paragraph 7.15 below)
6. the decision is within the powers or terms of reference of the decision maker responsible for the decision
7. any Councillor involved in the decision making process considered whether they had any declarable interest in the matter and, if necessary, made a declaration of interest and acted in accordance with Article 15 – Councillor Code of Conduct
8. any officer involved in the decision making process considered whether they had an interest in the matter and acted in accordance with Article 16 – Employee Code of Conduct
9. the decision was taken in an open and transparent manner
10. the decision was properly recorded and published within the appropriate timescale as set out in Article 13 – Access to information Procedure Rules
11. where appropriate, the views of the relevant ward Councillors had been sought.

For the purpose of openness, transparency and good decision making, where appropriate, it should be evidenced in the record of decision that the matters outlined above were taken into account and considered by the decision maker.

* 1. Decision makers must also ensure that, where relevant, the following have been carried out prior to taking a decision:
* adequate consultation with relevant stakeholders
* Data Protection Impact Assessment
* Equality Impact Assessment
* Carbon Impact Assessment

The outcomes of these processes must be recorded in the report to the decision maker and in the record of decision, including any reasons why they were not carried out.

* 1. Decisions may need to be taken through informal processes within the Council while they are being drafted in order to help shape the final decision. It is important that these informal processes are not mistaken for formal decision making bodies and that any decision is taken by an individual or body with formal authority to take it.
  2. It is important that decisions are taken in a timely and efficient manner and that decisions are planned with sufficient time to take into account the processes outlined in paragraphs 7.10 – 7.15 and other processes including, for Executive Decisions, the Call-in process as outlined in Article 11 – Overview and Scrutiny and the notice arrangements outlined in Article 13 – Access to Information Procedure Rules.
  3. **Advice from Officers**

Except where a decision relates to an operational matter, written advice must be sought from appropriate officers. For all Executive Decisions taken by the Leader, Executive Committees or Portfolio Holders and for all Non-Executive Decisions taken by Full Council or its committees, legal and financial advice as a minimum must be sought from suitably qualified officers and a full record of this advice included in the committee report or decision form. Advice from other Council services, including Procurement and Human Resources, must be sought where appropriate. Advice should also be sought on operational decisions where appropriate.

* 1. **Records of Decisions**

Report and Decision Form authors are responsible for the content of the reports and decisions they write and for ensuring they are drafted with accuracy, clarity and in accordance with the procedures outlined in paragraphs 7.10 – 7.15 above.

* 1. Further information on the specific requirements of records of Executive and Non-executive decisions and reports can be found in Article 10 – Executive Arrangements and Article 13 – Access to Information Procedure Rules.
  2. **Sub-delegation of Powers**

Powers held by Executive or Non-executive Committees, individual Portfolio Holders or officers may be sub-delegated by them to other Portfolio Holders, committees or to officers in writing via the minutes of a committee meeting or a sub-delegation form provided the sub-delegation is not specifically precluded by law or this Constitution. The form must set out the extent of the delegation, and whether it entails the withdrawal of a delegation. A copy of the record of the sub-delegation should be sent to the Head of Governance and the department should maintain a register of such delegations to be available for inspection on request.

* 1. Governance Framework Document G – Delegations to Officers will be updated to reflect any permanent sub-delegations to officers and the terms of reference for Committees and remits of Portfolio Holders will be updated to reflect any permanent sub-delegations made to them. Any sub-delegations that impact upon Portfolio Holder or Executive Committee remits and any sub-delegations to non-Executive Committees will be reported to the next meeting of Full Council for information and for approval to update the Constitution to reflect the change.
  2. The delegation of functions does not prevent the discharge of those functions by the person or body or individual who delegated them. Officers holding sub-delegations may ask their colleagues to discharge the function on their behalf but the officer holding the delegation remains accountable for that function.
  3. **The Common Seal**

The Chief Executive, the Director of Legal and Governance and the Head of Legal have authority to affix the Common Seal to any document required to give effect to a decision of the Council, a Board or a Committee or an officer exercising delegated powers. Documents not required by the Director of Legal and Governance to be under seal may be signed in accordance with Article 18 - Contract Procedure Rules and Governance Framework Document G – Delegations to Officers.

* 1. **Action in Case of Emergency or Disaster**

Where an emergency or disaster involving destruction of or danger to life or property occurs or there are reasonable grounds for believing such an emergency or disaster to be imminent and the Chief Executive is of the opinion that it is likely to affect all or part of the inhabitants of Nottingham City, he/she have all the Council’s powers to incur expenditure delegated to them under Section 138 of the Local Government Act 1972. Before exercising this delegated power, the Chief Executive shall, if possible, consult the Lord Mayor and the Leader or, in their absence, the Portfolio Holder with the matter concerned within their remit. The Chief Executive shall inform them of their actions as soon as practicable. They shall also endeavour to inform any affected ward Councillors as soon as practicable on what, in their opinion, needs to be done immediately and what has already been done.

* 1. Where the delegated powers in paragraph 7.22 above are exercised, Contract Procedure Rules and Financial Regulations are deemed to be waived for that purpose.
  2. The Chief Executive shall report to the Council any action taken under the powers delegated above as soon as practicable, including the extent to which it has been necessary to operate outside the Contract Procedure Rules and Financial Regulations. This report will include details of actions taken by others under the following provisions.
  3. In the absence of the Chief Executive, the lead officer operating under the Council’s emergency management procedures may exercise the delegated authority of the Chief Executive in paragraph 7.22 above. These officers shall report back to the Chief Executive as soon as possible.
  4. Further information on the Chief Executive’s powers in relation to circumstances where non-Executive Committees are unable to meet can be found in Article 9 – Non-Executive Functions and Committees.