

# Extraordinary Council

## SUMMONS AND AGENDA

**DATE:** Thursday 12 May 2011

**TIME:** 7.30 pm

**VENUE:** Council Chamber, Harrow  
Civic Centre

**All Councillors are hereby summoned to attend the Council Meeting for the transaction of the business set out.**



Hugh Peart  
Director of Legal and Governance Services

**Despatch Date:** Wednesday 4<sup>th</sup> May 2011

## **PRAYERS**

The Mayor's Chaplain, Imam Hafiz Muhammad Akram, will open the meeting with Prayers.

### **1. DECLARATIONS OF INTEREST:**

To receive declarations of personal or prejudicial interests arising from business to be transacted at this meeting, from all Members of the Council.

### **2. NOTIFICATION BY THE LEADER OF CABINET MEMBERS:**

To receive from the Leader of the Council (Councillor Bill Stephenson), notification of Cabinet Members, including the Wards they represent, and their delegated authorities.

### **3. APPOINTMENT OF MEMBERS TO COUNCIL COMMITTEES: (To Follow)**

To receive the nominations of the Groups to Committee places in accordance with their proportional entitlements and to formally establish Committees of the Council and their memberships for the Municipal Year 2011/12.

### **4. APPOINTMENT OF CHAIRMEN TO COMMITTEES: (To Follow)**

To receive a proposal from the Leader of the Council (Councillor Bill Stephenson), as to the appointment of Chairmen to Committees for the Municipal Year 2011/12.

### **5. TERMS OF REFERENCE AND DELEGATED POWERS OF COMMITTEES: (To Follow)**

On a proposal from the Leader of the Council (Councillor Bill Stephenson), to agree the arrangements for the Terms of Reference and Delegated Powers of Committees, which will form part of the Constitution.

### **6. APPOINTMENT OF REPRESENTATIVES TO OUTSIDE BODIES: (To Follow)**

To receive proposals from Political Groups as to the appointment of representatives of the Authority to serve on Outside Bodies for the Municipal Year 2011/12.

### **7. CORPORATE DIRECTORS' DELEGATED POWERS: (Pages 1 - 16)**

On a proposal from the Leader of the Council (Councillor Bill Stephenson), to continue the existing arrangements as set out in Part 3B of the Constitution.

## **FOR CONFIRMATION**

**8. CONSIDERATION OF ADOPTION OF SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY SECTION 27 OF THE POLICING AND CRIME ACT 2009: (Pages 17 - 20)**

Recommendation I: Licensing and General Purposes Committee  
(1 March 2011)

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# **EXTRAORDINARY COUNCIL**

## **12 MAY 2011**

### **Part 3B – Constitution**

#### **Corporate Directors' Delegations**

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### **3B DELEGATIONS TO THE CHIEF EXECUTIVE CORPORATE DIRECTORS AND STATUTORY OFFICERS**

This Scheme sets out those delegations made to the Chief Executive and Corporate Directors whether by the Council or by Cabinet (the Executive) or derived from statute. The Scheme also sets out the powers of the Statutory Officers of the Council.

The Chief Executive, Corporate Directors and Statutory Officers may (where statute allows this) further delegate responsibility for matters to officers within their departments. These delegations must be in writing.

All delegated powers are derived from either the Council or Executive. The source of each delegation is specified in the Scheme.

Council, Cabinet or Committees may reserve to themselves decisions that have been delegated to officers by giving notice to the relevant Corporate Director or the Chief Executive.

When any new power or duty is given to the Council and it is unclear where responsibility for that function lies, the exercise of that power or duty will be undertaken by the Chief Executive or relevant Corporate Director.

#### **Principles of Delegation**

1. Officers may exercise delegated powers provided that the matter:-
  - a) is covered by an approved policy
  - b) there are no unusual features
  - c) there are no political or other significant issues,otherwise the matter should be referred to Members to determine.
2. In exercising delegated powers officers must:
  - 2.1 Incur expenditure within approved estimates/limits.
  - 2.2 Comply with the Council's Procedural Rules and Financial Regulations in force at the time.
  - 2.3 Comply with any policy, plan or direction of the Council, Cabinet or Committee.
  - 2.4 Consult and where appropriate, and/or agree with other relevant officers.
  - 2.5 Consult or refer the matter to the Chief Executive in appropriate cases.
  - 2.6 Keep appropriate records and registers of decisions and report to Council, Cabinet or Committee if required.

3. In using delegated powers, officers are accountable to the Council or Cabinet or the Committee from which those delegated powers derive.
4. Acts of officers done under delegated powers are deemed to be acts of the Council.
5. Delegations exercised in relation to contracts must follow the Contract Procedure Rules in force at the time.

### **Non Executive Decision Procedure**

The Chief Executive, Corporate Directors and Statutory Officers may be specifically authorised to take decisions on behalf of the Council or a Committee in cases of urgency or in relation to minor matters. In doing the procedure set out below must be followed:

#### **1. Urgent Non-Executive Decisions and Minor Matters**

##### **1.1 Matters which are the responsibility of Council**

In relation to matters which are the responsibility of Council, subject to consultation with the Leader of the Council (or in his/her absence the Deputy Leader) and the leaders of the political groups or their nominees, the Chief Executive, Corporate Directors and Statutory Officers shall have the power to act on behalf of the Council in cases of urgency and on minor matters, where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council. In the event of disagreement between the Members consulted, the delegated action shall not be exercised. The matter must be referred to the Council. The safeguards in 1.3. below must be followed.

##### **1.2 Matters which are the responsibility of Committees of the Council**

In relation to matters which are the responsibility of a Council Committee, subject to consultation with the Chair of the relevant committee and the nominated members of the political groups or their nominees, the Chief Executive, Corporate Directors and Statutory Officers shall have the power to act on behalf of the Council in cases of urgency and on minor matters, where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council Committee. In the event of disagreement between the Members consulted, the matter shall be referred to the Chief Executive who may take the decision after consultation with the Leaders of all political groups or their nominees, and if appropriate, with the statutory officers. The safeguards in 1.3. below must be followed.



### 1.3 Safeguards

The procedure must only be used when considered essential to achieving the efficient administration of the service and for urgent matters consideration must be given to whether the matter can wait until the next scheduled meeting or whether the calling of a special meeting can be justified.

The information in the report form must be given the same care and attention as a report to the committee or to Council. Councillors must be given all the information they need in order to fully consider the matter.

All decisions taken by officers under this delegated power must be reported for information to the next meeting of the appropriate committee.

For minor matters the subject matter:

- should not give rise to implication of a policy or resource nature for the authority;
- the cost of implementing the decision must not exceed agreed budgets; and
- the decision should not conflict with any plan or strategy agreed by the Council.

## 2. Urgent Executive Decisions and Minor Matters Procedure

### **Matters, which are the responsibility of the Cabinet**

All executive decisions shall be referred to the Portfolio Holder or the Cabinet as appropriate for decision.

### **General**

1. Where appropriate the Chief Executive may exercise any function delegated to any other officer, eg in case of absence.
2. Corporate Directors may exercise any function delegated to any other officer within their directorate.
3. Corporate Directors may exercise any function outside their directorate delegations delegated to them by the Chief Executive.

The Chief Executive and Corporate Directors have the following general powers:

4. To manage and promote the services and functions for which they are responsible. This includes:

Delegated Powers	Source of Delegated Powers
<b><u>General</u></b>	
3.1 Taking and implementing any decision required for operational effectiveness.	Executive and Council
3.2 Responding to consultation documents, which are considered appropriate to be dealt with at officer level. β  β. <b>The Leader and Portfolio Holder for Strategic Overview, External Affairs &amp; Property, will deal with all other consultation responses – Section 3A Allocation of Responsibilities</b>	Executive
3.3 Bid for external resources for services within their remit.	Executive
3.4 Liaise and develop partnerships with external agencies, Government departments and stakeholder organisations.	Executive
<b><u>Financial</u></b>	
3.5 Authorise expenditure within approved revenue budget estimates.	Council
3.6 Vire resources within the rules set out in Section 3, paragraphs 13-16 of the Financial Regulations.	Executive
3.7 Approve orders.	Executive
3.8 Authorise payment of invoices.	Executive
3.9 Authorise the collection of income.	Executive
3.10 Authorise petty cash and expenses via payroll.	Executive

3.11 Write off debts up to £10,000.	Executive
3.12 To dispose of any minor asset (e.g furniture and equipment) up to £10k in value.	
3.13 To set, vary and recover costs, fees and charges for goods and services funded by the Council.	Executive
<b><u>Contracts</u></b> 3.14 Approve contracts without limit that do not require sealing.	Executive
3.15 Approve variations in contracts.	Executive
3.16 Approve use of consultants.	Executive
<b><u>Human Resources</u></b> 3.17 To appoint, suspend and dismiss staff.	Council and Executive
3.18 To take any action under the Council's employment policies and procedures.	Council and Executive
3.19 To re-organise staff within their directorates subject to: <ul style="list-style-type: none"> <li>▪ Consultation with Chief Executive and Head of HR</li> <li>▪ Where appropriate, consultation with staff and/or their representatives.</li> <li>▪ No service policy implications.</li> <li>▪ No expenditure in excess of budget.</li> </ul> No growth in net expenditure beyond the current year.	Council and Executive
3.20 To authorise absence leave and payments, including overtime, expenses, loans, and ex gratia payments.	Executive

3.21 To authorise training and development and associated matters.	Executive
<b>INDIVIDUAL DELEGATIONS</b>	<b>Source of Individual Delegated Powers</b>
<p><b><u>Chief Executive</u></b></p> <p>1. To take any action necessary to ensure the effective and efficient management and operations of the Council. If following a Borough Election the Leader has not been elected as a councillor or, if re-elected, the political party of which they are a member does not have a majority on the Council, then until a Leader is appointed, the Head of Paid Service (in consultation with all Group Leaders) shall be authorised to take and implement any decision required for operational effectiveness of the Council but excepting any such responsibilities, duties and powers specifically reserved to any other person or body.</p>	Executive and Council
<p>2. To promote the importance of the ethical agenda and to sustain the highest standards of ethical behaviour on the part of the Council's officers in accordance with the Code of Conduct for Council Employees.</p>	Council
<p>3. To make any decision delegated to another officer.</p>	Executive and Council
<p>4. Approve minor and technical changes to the Council constitution in consultation with the Monitoring Officer.</p>	Council
<p>5. Act in minor or urgent matters where to delay for a Council meeting would not, in his/her opinion, be in the Council's interest, subject to written approval of the Leaders of the political groups. β</p>	Council

6. Act in minor or urgent matters where to delay for a Council committee meeting would not in his/her opinion, be in the Council's interests, subject to consultation with the political groups or their nominees.β	Council
7. To take such action in relation to Statutory Chief Officers and Chief Officers as assigned in Rule 7 of Section 4H.	Council
8. To report as appropriate to the Authority in the manner in which the Authority discharges its functions: <ul style="list-style-type: none"> <li>▪ the number and grades of staff required to discharge its functions</li> <li>▪ the organisation of the Authority's staff</li> <li>▪ the appointment and management of the Authority's staff.</li> </ul>	Council and Executive
9. To make payments or provide other benefits in cases of maladministration etc in accordance with s92 of the Local Government Act 2000.	Council
10. To take any action necessary to ensure the effective development and implementation of the Council's key strategies and services.	Executive and Council
11. To undertake any action necessary to ensure the effective development and implementation of the Council's Corporate Governance Framework.	Executive and Council

β The powers in 5 and 6 above would be used only on production of a report, including financial and legal implications. All decisions taken using the powers in 5 and 6 above must be reported to the next meeting of the relevant committee or Council.

<p>The Corporate Directors for</p> <p>Adults and Housing  Children's Services  Community &amp; Environment  Finance and  Place Shaping</p> <p>All have the following delegated powers and duties</p>	
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1. To take any action necessary to ensure the effective and efficient management of their directorate	Council and Executive
2. To act in minor or urgent matters where to delay to a Council Committee meeting would not, in his/her opinion, be in the Council's interest, subject to consultation with the Chief Executive and Leaders of the political groups or their nominees.	Council
3. To take any action necessary to ensure the effective development and implementation of the Council's key strategies and services relating to their directorate.	Council and Executive

4. To undertake any action necessary to ensure the effective development and implementation of the Council's Corporate Governance Framework.	Council and Executive
Director of Legal and Governance Services	
1. To institute, defend or participate in any legal proceedings, in any Court or Tribunal and in any case where such action is necessary to give effect to decisions of the Council, or in any case where he or she considers that such action is necessary to protect the Council's interests.	Council
2. To delegate to any officer authority to institute defend or participate in any legal proceedings, in any Court or Tribunal and in any case where such action is necessary to give effect to decisions of the Council, or in any case where he or she considers that such action is necessary to protect the Council's interests.	Council
3. To authorise officers to appear in Court on the Council's behalf.	Council
4. To act as the proper officer for the purposes of Births, Deaths and Marriages	Council
5. To undertake any action necessary to ensure the effective development and implementation of the Council's Corporate Governance Framework.	Council and Executive

### **STATUTORY OFFICERS**

<b>Head of Paid Service</b>	<b>Statutory Source of Function</b>
1. Duty to prepare a report setting out proposals on the following matters: <ul style="list-style-type: none"> <li>a. the manner in which the discharge by the authority of their different functions is co-ordinated;</li> <li>b. the number and grades of staff required by the authority for the discharge of their functions;</li> </ul>	Sections 4 and Local Government and Housing Act 1989

c. the organisation of the authority's staff; d. the appointment and proper management of the authority's staff	
2. Duty to arrange for a copy of the report to be sent to each member of the authority	Section 4 Local Government and Housing Act 1989
3. Arrange for the authority to consider the report at a meeting held not more than three months after copies are first sent to members of the authority.	Section 4 Local Government and Housing Act 1989
4. All staff to be appointed on merit	Section 7 Local Government and Housing Act 1989
5. Duty to adopt Standing Orders with respect to staff.	Section 8 Local Government and Housing Act 1899
6. Confidentiality of staff records	Section 11 Local Government and Housing Act 1989
7. Conflicts of interest in staff negotiations	Section 12 Local Government and Housing Act 1989
8. Appointment of Staff	Section 112 Local Government Act 1972
<b>Monitoring Officer</b>	<b>Statutory Source of Function</b>
1. Report on contravention or likely contravention of any enactment or rule of law.	Section 5 & 5A Local Government and Housing Act 1989.
2. Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 Local Government and Housing Act 1989.



3. Appointment of Deputy Monitoring Officer.	Section 5 Local Government and Housing Act 1989.
4. Report on resources needed to undertake Monitoring Officer functions.	Section 5 Local Government and Housing Act 1989.
5. Investigate misconduct in compliance with Regulations and directions of Ethical Standards Officers (ESO).	Regulations under Section 66(1) and 66(6) Local Government Act 2000. Direction from ESO in individual cases.
6. Establish and maintain registers of member's interests and gifts and hospitality.	Section 81 Local Government Act 2000 and Members' Code of Conduct.
7. Advice to Members on interpretation of the Code.	Members' Code of Conduct
8. Key role in framework for local determination of complaints. Advice to Members, officers and the public on the operation of the Code and how alleged breaches should be investigated.	Statutory guidance para. 8.20 Regulations under section 66 of the LGA 2000.
9. Liaison with Standards Board for England and Ethical Standards Officers.	Regulations under sections 54(4), 57(3) and 66 of the LGA 2000.
10. Advice to Members on Compensation or remedy for maladministration.	Section 92 Local Government Act 2000.
11. Advice on vires issues, maladministration, financial impropriety, probity, policy framework and budget issues to all members.	ODPM guidance.
<b>Chief Finance Officer (Section 151 Officer)</b>	<b>Statutory Source of Function</b>

1. Oversight of proper administration of financial affairs.	Section 151 Local Government Act 1972
2. Duty to nominate a member of his/her staff as chief financial officer (if unable to act owing to absence or illness).	Section 114 Local Government Finance Act 1988
3. Duty to report on a Council decision or likely decision which would lead to the authority incurring unlawful expenditure or would cause a loss or deficiency to the authority or entry of an unlawful item of account.	Section 114 Local Government Finance Act 1988
4. Duty to report if the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.	Section 114 Local Government Finance Act 1988
5. Duty to report on an Executive decision or likely decision which would lead to the authority incurring unlawful expenditure or would cause a loss or deficiency to the authority or entry of an unlawful item of account.	Section 114A Local Government Finance Act 1988
6. Duty to report on the robustness of the authority's budget calculations.	Section 25 Local Government Act 2003
7. Duty to report on the adequacy of the authority's proposed financial reserves.	Section 25 Local Government Act 2003
8. Duty to report on previous years' financial reserves if it appears that controlled reserves is or likely to be inadequate, including recommendations for appropriate actions to rectify.	Section 27 Local Government Act 2003
9. Duty to assist the Council in carrying out regular budget monitoring.	Section 28 Local Government Act 2003

<b>Director of Children's Services</b>	<b>Statutory Source of Function</b>
1. Responsible for functions conferred on or exercisable by the authority in their capacity as a local education authority	Section 18 Children Act 2004
2. Responsible for functions conferred on or exercisable by the authority, which are social services functions, so far as those functions relate to children.	Section 18 Children Act 2004
3. Responsible for functions under section 23C to 24D of the Children Act 1989, relating to looked after children.	Section 18 Children Act 2004
4. Improving well-being of children in the authority's area.	Sections 10 and 18 Children Act 2004
5. Safeguarding and promoting the welfare of children.	Sections 11 and 18 Children Act 2004
6. Establish and maintain information databases in relation to the well-being and safeguarding of children	Section 12 and S18 Children Act 2004
7. Preparation and publication of a Children's and young people's plan.	Sections 17 and 18 Children Act 2004.
8. Responsible for any function under section 75 of the National Health Service Act 2006 on behalf of an NHS body so far as those relate to children.	Section 18 Children Act 2004
9. Responsible for any additional functions as the authority consider appropriate	Section 18 Children Act 2004
<b>Director of Adult Social Services</b>	<b>Statutory Source of Function</b>

1. Responsibility for all social services functions (other than those for which the Director of Children's Services is responsible under section 18 of the Children Act 2004).	Section. [1A] and Schedule 1 of the Local Authority Social Services Act 1970
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# **EXTRAORDINARY COUNCIL**

## **12 MAY 2011**

**RECOMMENDATION I: CONSIDERATION OF ADOPTION OF SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY SECTION 27 OF THE POLICING AND CRIME ACT 2009**

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# LICENSING AND GENERAL PURPOSES COMMITTEE MINUTES

## 1 MARCH 2011

**Chairman:** \* Councillor Mano Dharmarajah

**Councillors:**

* Ramji Chauhan (3)	* Krishna James
* Mrinal Choudhury	* Ajay Maru
* John Cowan	* John Nickolay
* David Gawn	* Phillip O'Dell (3)
* Stephen Greek (4)	* Raj Ray
* Susan Hall	* Simon Williams
* Thaya Idaikkadar	* Stephen Wright (2)

\* Denotes Member present  
(2), (3), (4) Denote category of Reserve Members

### RECOMMENDED ITEMS

**33. Consideration of adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009**

The Committee received a report of the Divisional Director of Environmental Services, which outlined amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009.

An officer informed the Committee that the Local Government (Miscellaneous Provisions) Act 1982 had introduced a licensing regime that allowed local authorities to control sex establishments and that the Council had adopted the relevant part of the Act in 1983. However, Section 27 of the Policing Crime Act 2009 inserted a new category of sex establishment known as “sexual entertainment venue” into Schedule 3 of the Local Government

(Miscellaneous Provisions) Act 1982. The modification allowed local authorities to insist that premises operating as sexual entertainment venues obtained a sex establishment licence. The officer explained that the Council would only be able to licence such venues if it adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009.

Public consultation had taken place between 11 October and 31 December 2010 and residents had been asked whether they wished the Council to adopt the amendment. The consultation had also allowed residents to comment on the Council's proposed Sex Establishment Licensing Policy, which set out how Harrow would assess applications for Sex Establishment Licences. The Policy proposed that each Ward in Harrow be considered as a "relevant locality" for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 and that the appropriate number of sex establishments in each relevant locality be set at zero. Whilst applications for sex establishment licences would be considered on a case by case basis, the Policy would allow for a presumption of refusal for such applications.

Following questions from Members, officers clarified the following points:

- some neighbouring boroughs had sexual entertainment venues, although none existed in Harrow;
- the consultation had been advertised on the Council's online consultation portal and in local newspapers. Officers had also written to resident associations, inviting them to respond to the consultation;
- the way in which the legislation was written allowed the Council to lawfully implement a Sex Establishment Licensing Policy that had an in-built presumption of refusal. Challenges to the Policy would have to demonstrate the way in which a sexual entertainment venue would benefit Harrow;
- there was no evidence that licensing against sexual entertainment venues pushed the market underground. In general, most sexual entertainment operators wished to operate legally and would not risk operating without a licence;
- the Council could not prevent a venue holding one-off sexual entertainment events, provided that the number of events did not exceed 12 per year.

**Resolved to RECOMMEND:** (to Council) That

- (1) the Council adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009;
- (2) the Council adopt the proposed Sex Establishment Licensing Policy, as set out in the report.