

Part 2

Articles of the Constitution

ARTICLE 1 - THE CONSTITUTION

(SECTION 37 OF THE LOCAL GOVERNMENT ACT 2000 AND LGA 2000 (CONSTITUTIONS) - DIRECTION 2000)

Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

The Constitution

This Constitution, and all its appendices, is the Constitution of the Warwick District Council.

Purpose of the Constitution - Clause 3(a) of the Direction

The purpose of the Constitution is to enable the Council to:

1. provide clear leadership to the community through implementation of its current Corporate Strategy.
2. To help Councillors represent their constituents more effectively.
3. Enable decisions to be taken efficiently and effectively.
4. Create a powerful and effective means of holding decision makers to public account.
5. Ensure that no Councillor will review or scrutinise a decision in which they were directly involved.
6. Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for the decisions made.
7. Provide means of improving the delivery of services to the community.

Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in Article (15).

ARTICLE 2 - MEMBERS OF THE COUNCIL

2.01 Composition and Eligibility

a. Composition

The Council will comprise 44 members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme as approved by the Secretary of State.

b. Eligibility

Only registered voters of the district or those living or working there will be eligible to hold the office of councillor. **(Section 79 of the Local Government Act 1972).**

2.02 Election and Terms of Councillors

The regular election of councillors will be held on the first Thursday in May every four years beginning in 2003. The terms of office of councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election. **(Sections 3-7 of the Local Government Act 1972/Section 37 of the Local Government Act 2000 and paragraph 3(b) of the Constitutions Direction 2000).**

2.03 Roles and Functions of Councillors

a) Key Roles

All Councillors will:

- i. collectively be the ultimate policy-makers and carry out a number of strategic and corporate functions;
- ii. (ii) represent their communities and bring their views into the Council's decision making process, i.e. become the advocate of and for their communities;
- iii. (iii) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- iv. (iv) balance different interests identified within the ward and represent the ward as a whole;
- v. (v) be involved in decision making;
- vi. (vi) be available to represent the Council on other bodies; and
- vii. (vii) maintain the highest standards of conduct and ethics.

(b) Rights and Duties

- i. Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law. (Section 37 of the LGA 2000 and paragraph 3(v) of the Directions) and paragraph 17 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended.
- ii. Councillors will not make public information which is given in confidence and exempt from publicity without the consent of the Council.

- iii. for these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.04 **Conduct -**

Councillors will at all times observe the Members' Code of Conduct, and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

2.05 **Allowances - (Section 18 of the Local Government and Housing Act 1989, Section 37 of the Local Government Act 2000 and paragraph 3(d) of the Constitution Directions)**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

2.06 **Role Description for Councillors**

The Council has produced a document which sets out the Role Description of Warwick District Councillors that is annexed to this Constitution

ARTICLE 3 - CITIZENS AND THE COUNCIL

3.01 Citizens' Rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

a) Voting and Petitions

Citizens whose names are included on the Electoral Roll for the area have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.

b) Information

Citizens have the right to:

- i. attend meetings of the Council, Cabinet, committees and sub-committees except for that part of the meeting where confidential or exempt information is disclosed, and that part of the meeting is therefore held in private;
- ii. find out from the Forward Plan what key decisions will be taken by the Cabinet and when; Access to Information Regulations - Regulation 13;
- iii. see reports and background papers, (except where confidential or exempt information is disclosed) and any records of decisions made by the Council, its Committees, Sub-Committees and Cabinet; and
- iv. inspect the Council's accounts and make their views known to the external auditor.

c) Participation

Where a petition is being presented to the Council, the citizen presenting it may address the meeting on the subject for three minutes. Petitions may be presented to the Council, Cabinet, or Committee or sub - committees.

d) Complaints

Citizens have the right to complain to:

- i. the Council itself under its complaints scheme;
- ii. the Local Government Ombudsman after using the Council's own complaints scheme;
- iii. the Monitoring Officer about a breach of the Councillors' Code of Conduct.

3.02 Citizens' Responsibilities

Citizens must not be violent, abusive or threatening to Councillors or officers and must not willfully harm property owned by the Council, Councillors or Officers.

ARTICLE 4 - THE COUNCIL

LOCAL GOVERNMENT ACT 1972 - SECTIONS 3-7

LOCAL GOVERNMENT ACT 2000

**DETR GUIDANCE CHAPTER 2 - CONSTITUTIONS DIRECTION - PARAGRAPH 3
FUNCTION AND RESPONSIBILITIES (ENGLAND) REGULATIONS 2000**

4.01 Meanings

a) Policy Framework

The policy framework means the following plans and strategies:

- Sustainable Community Strategy
- Crime and Disorder Reduction Strategy
- Development Plan Documents (DPD's) i.e. Core Strategy, Local Plan and Area Action Plans (see 4.02 (c))
- Council's Corporate Strategy
- Food Law Enforcement Service Plan
- The plan and strategy which comprise the Housing Investment Programme
- Local Agenda 21 Strategy
- Community Engagement Strategy

b) Budget Framework

The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, fees and charges, setting the council tax and housing rents and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

c) Housing Land Transfer

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993, or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

4.02 Functions of the Council

Only the Council will exercise the following functions:

- a) adopting and changing the Constitution;
- b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- c) approval of the preferred options and draft for submission to the Government Office West Midlands of Development Planning Documents under the Planning and Compulsory Purchase Act 2004.
- d) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not

- wholly in accordance with the budget;
- e) appointing the Leader, as set out in Article 7 re 7.04 and membership of Committees
- f) agreeing and/or amending the terms of reference for committees, deciding on their composition (which would normally be politically proportional) and making appointments to them;
- g) appointing representatives to outside bodies
- h) adopting an allowances scheme for members;
- i) changing the name of the district
- j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than Cabinet;
- l) all other matters which, by law, must be reserved to Council; and
- m) scrutinising any Cabinet decision where the relevant Overview & Scrutiny Committees recommends that the Council considers that the Cabinet should reconsider its decision (as set out in the Council procedure Rules)

4.03 Council Meetings

There are three types of Council meeting the annual meeting, ordinary meetings and extraordinary/special meetings and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

4.04 Responsibility for Functions

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

ARTICLE 5 - CHAIRING THE COUNCIL

LOCAL GOVERNMENT ACT 1972 - SECTIONS 3-7

LOCAL GOVERNMENT ACT 2000 - SECTION 37 - CONSTITUTIONS DIRECTION PARAGRAPH 3(G)

5.01 Role and function of the Chair

The Chair of the Council and in their absence, the Vice-Chair will have both a ceremonial role and that of chairing Council meetings.

The Chair will be elected by the Council annually. The Chair will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on Cabinet are able to hold the Cabinet to account;
4. to promote the District by attending appropriate events and functions, including achievements of the Council for both its officers and councillors. Attendance at any event outside the District to be approved by Group Leaders.;
5. The Chair may on occasions delegate attending functions to their Vice Chair, or in exceptional circumstances, another Councillor (normally the previous Chair);
6. Cannot be a member of the Cabinet or Standards Committee;
7. Can decide to be called Chair, Chairwoman, Chairperson, or Chairman during their year in office;
8. Determine one or two charities, associated with the District, to advocate during their year in office, but not hold any specific events to fund raise for them.

ARTICLE 6 - OVERVIEW & SCRUTINY COMMITTEES

Access to Information Regs 2000 – Reg 18 – Sections 21 and Schedule 1 para 7

Local Government Act 2000 – Constitutions Direction – Para 3(k)

6.01 Terms of Reference

The Council has a Scrutiny Committee called, the Overview & Scrutiny Committee, to undertake the overview and scrutiny functions.

The Committee will review items to be considered by Cabinet, to review past decisions, policy development, health and wellbeing issues, specific issues and problems within any service area.

The Committee will:

- Review the robustness of business cases
- Promote value for money and good procurement practice
- Make recommendation on good financial management practices
- Review specific Cabinet items and past decisions

The Council has a second Scrutiny Committee called the Housing Scrutiny Committee. Their purpose will be to review and challenge the progress in respect to ensuring compliance for safety under the Social Housing (Regulation) Act and overall view on the operation and delivery of the Housing Investment Plan and the HRA. They provide assurance on the delivery of this to Cabinet (as the responsible body) on behalf of the Council.

6.02 General role

Within their terms of reference, the Committees will:

- i. review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- ii. make reports and/or recommendations to Council and/or the Cabinet and/or any policy, joint or area committee in connection with the discharge of any functions;
- iii. consider any matter affecting the area or its inhabitants;
- iv. exercise the right to call-in, for reconsideration, decisions made but not yet implemented by Cabinet and/or any policy or area committees; and
- v. agree the terms of reference of best value reviews

6.03 Specific functions

(a) Policy development and review.

The Committees may:

- i. assist the Council and Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
- ii. conduct research, community and other consultation in the analysis of policy issues and possible options;
- iii. consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- iv. question members of Cabinet and/or committees and officers about their views on issues and proposals affecting the area; and
- v. liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of
- i. local people are enhanced by collaborative working.

(b) **Scrutiny**

The Committees may:

- i. review and scrutinise the decisions made by and performance of the Cabinet and/or committees and council officers both in relation to individual decisions and over time;
- ii. review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- iii. question members of the Cabinet and/or committees and chief officers about their decisions and performance of their services, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- iv. make recommendations to the Cabinet and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
- v. review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Committee(s) and local people about their activities and performance; and
- vi. question and gather evidence from any person (with their consent).

(c) **Finance**

The Committees may exercise overall responsibility for the finances made available to them (if any).

(d) **Annual report**

The Committees must report annually to Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.

6.04 **Proceedings of the Committees**

The committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules and the Council procedure rules (in part) as set out in Part 4 of this Constitution.

6.05 **Task and Finish Groups**

The Committees may each at any time instruct an officer, using the agreed methodology, in consultation with a group of named members, to establish a Task and Finish Group to undertake a particular review and make recommendations thereon, either at the volition of the Committee or in response to a request from the Cabinet for such a review.

6.06 Such Task and Finish Groups are not Committees or Sub-Committees and are not subject to a requirement for political proportionality, it being customary for any member with an interest or expertise in the particular topic to be included in such a consultative group.

6.07 **Political balance**

The allocation of seats to political groups will be made in accordance with the political balance rules and where there are an uneven number of seats then the odd seat shall *be in the discretion of the Leader in consultation with other Group Leaders*.

6.08 Excluded matters

The Committees will not be permitted to consider some matters under legislation and others because of best practice these are set out below:

- (a) Any matter relating to a decision on a specific planning application;
- (b) Any matter relating to a decision on a specific licensing application;
- (c) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment; including but not limited to;
- (d) Standards decisions and items which may be brought for decision;
- (e) Appeals decisions and items which may be brought for decision;
- (f) Breaches of the Constitution and its protocols e.g. Code of Conduct;
- (g) Matters relating to the terms and conditions of employment or conduct of individual or groups of staff or Members;
- (h) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee;
- (i) Audit process and items which are likely to be considered by the Audit process;
- (j) Matters within the proper remit of the Section 151 and Monitoring Officers;
- (k) Matters relating to a particular identifiable service recipient or potential service recipient;
- (l) Complaints or matters before the courts, or Ombudsman, or Regulatory Bodies; and
- (m) Contractual matters, other than performance monitoring and review, except with the agreement of the Cabinet.

ARTICLE 7 - THE CABINET

LEADER AND DEPUTY LEADER WITH CABINET

7.01 Role

The Cabinet is the Council's major decision making body, although certain important but limited powers are reserved to Council and the Regulatory, Employment Standards and Planning Committees. Cabinet's role is to provide effective strategic leadership to the Council and to ensure that the Council effectively discharges its legal responsibilities and role in the community.

7.02 Form and composition

Cabinet will consist of a Leader together with at least 2, but not more than 9, councillors appointed to Cabinet by the Leader. (Cabinet shall comprise of no more than 10 members including the Leader.)

7.03 Leader (known as Leader of the Council)

Such election will normally be made at the Annual meeting following the election of a new Council and will last for four years, but a new Leader may be appointed at any time on the occurrence of one or more of the events described at (a) to (e) below.

The Leader will be a councillor elected to the position of Leader by the Council and will hold office until:

- (a) The Annual meeting after their four year period expires;
- (b) When the Council removes them from the position (which can be at any time);
- (c) they resign from the position;
- (d) they are suspended from being a councillor (although they can resume the position at the end of the suspension); or
- (e) they cease to be a Councillor.

The Deputy Leader will deputise for the Leader in their absence.

7.04 Other Cabinet members

- Only councillors may be appointed to the Cabinet;
- There cannot be co-optees and no deputies or substitutes for Cabinet members;
- Neither the Chair nor Vice Chair of the Council may be appointed to the Cabinet and members of the Cabinet (including the Leader) may not be members of an Overview and Scrutiny Committee; and
- Cabinet members, including the Deputy Leader, will be appointed by the Leader.

Other Cabinet members shall hold office until any of the following occurs:

- a) they resign from office;
- b) they are suspended from being councillors (although they may resume office at the end of the period of suspension);
- c) (c) they are no longer a councillor;
- d) they are removed from office at any time by the Leader; or
- e) they fail to attend any Cabinet meetings or if they are portfolio holders, fail to discharge any of the functions of a portfolio holder for six months without having obtained Council approval.

7.05 Portfolio Holders

The Leader may appoint from among the Cabinet members, Portfolio Holders who will act as spokespersons for the service areas and may be given delegated authority by the Council to take Executive decisions within these areas. The current Portfolio Holder remit is set out in Part 7 as Part of the Management Structure.

7.06 Proceedings of the Cabinet

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules and the Council Procedure Rules (in part) and set out in Part 4 of this Constitution.

7.07 Responsibility for functions

The Monitoring Officer and/or Chief Executive will maintain a list in Part 3 of this Constitution setting out which individual members of the Cabinet, committees of the Cabinet, officers or joint arrangements are responsible for the exercise of particular Cabinet functions.

ARTICLE 8 – LICENSING & REGULATORY COMMITTEE, OTHER COMMITTEES AND PANELS

8.01 Licensing & Regulatory Committee, other committees and panels

The Council has established the following Committees not covered by individual articles as set out in Part 3 paragraph 2 (Responsibility for Council Functions) of this Constitution:

Planning Committee

Employment Committee

Licensing & Regulatory Committee

Audit Committee (Undertaken by the Finance & Audit Scrutiny Committee)

The Council reserves the power to appoint other committees to carry out those functions and other functions which may accrue to them.

ARTICLE 9 - The Standards Committee

9.01 Standards Committee

The Council has established a Standards Committee to oversee the operation of the Council's Code of Conduct, known as the Audit & Standards Committee.

9.02 Composition

- a) **Membership.** The Committee will comprise 12 Members in total, calculated on the following basis, with each member to be of equal status who shall not include the Leader, Chair or Vice Chair of the Council nor any member of the Council's Cabinet;
- b) **Substitutes.** There will be one named substitute for each District Council member of the Committee.

9.03 Role and Function

The Committees role and functions is defined in Part 3 of the Constitution - Responsibility for Council Functions.

9.04 Quorum

The quorum for a meeting of Committee shall be as set out within Council Procedure Rule 3.

ARTICLE 10 - Area Committees and Forums

10.01 Area Committees and Forums

The Council may appoint Area Committees and Forums as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

The Council will consult with relevant parish and/or town councils and the chairmen of relevant parish and/or town meetings when considering whether and how to establish Area Committees or Forums.

10.02 Conflicts of interest & membership of Area Committees and Overview and Scrutiny Committees

- (a) **Conflict of interest.** If an Overview and Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of the Area Committee or Forum of which the councillor concerned is a member, then the councillor may not speak or vote at the Overview and Scrutiny Committee meeting unless a dispensation to do so is given by the Standards Committee.
- (b) **General policy reviews.** Where an Overview and Scrutiny Committee is reviewing policy generally the member must declare their interest before the relevant agenda item is reached, but need not withdraw.

10.03 Area Committees and Forums - access to information

Area Committees and Forums will comply with the Access to Information Rules in Part 4 of this Constitution.

Agendas and notices for Area Committee and Forum meetings which deal with both functions of Cabinet and functions which are not the responsibility of Cabinet will state clearly which items are which.

10.04 Cabinet members on Area Committees and Forums

A member of the Cabinet may serve on an Area Committee or Forum if eligible to do so as a councillor.

ARTICLE 11 - Joint Arrangements

11.01 Arrangements to promote well being

The Council, or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

11.02 Joint arrangements

- (a) The Council may establish joint arrangements with one or more local authorities and/or their Cabinet to exercise functions which are not executive functions in any of the participating authorities, or advise the Council. [Such arrangements may involve the appointment of a joint committee with these other local authorities]
- (b) Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) Cabinet may appoint members to a joint committee from outside Cabinet in the following circumstances:
 - the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, Cabinet may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area;
 - the joint committee is between a county council and a single district council and relates to functions of the Cabinet of the County Council. In such cases, the Cabinet of the County Council may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within the area.

In both of these cases the political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

- (f) Warwick District Council has joined a Joint Committee across the Coventry & Warwickshire Area, the Sub Regional Economic Prosperity Board, to drive and provide sub-regional governance, to the economic development and prosperity agendas. (Minute 84 Executive 13 November 2013). The terms of reference for this are appended to the Constitution.
- (g) Warwick District Council has formed a Joint Cabinet with Stratford-on-Avon District Council under sections 101 and 102 of the Local Government Act 1972, section 9EB of the Local Government Act 2000 and all other relevant legal powers, following decisions taken by the respective Cabinet of each council in February 2021. The purpose of the Joint Committee is to enable the two Council's to work more closely in developing a combined Local Development Plan for South Warwickshire and ensuring that decisions are taken collectively and in a timely manner. The Joint Committee will not at present undertake any other function than those defined within the terms of reference below and, as defined by law, and as such the adoption of the South Warwickshire Local Development Plan Document / Local Plan will remain with the individual Council's for final approval. The Constitution for the Joint Committee, appended to this Constitution, includes a set of standing orders that takes precedence over the respective constitutional documents of each of the two councils. However, where the Constitution for the Joint Committee is silent on an issue, the Constitution of each respective Council will take precedence.
- (h) The Council has appointed a Joint Appointments Committee with Stratford-on-Avon under sections 101 and 102 of the Local Government Act 1972 and all other relevant legal powers, following decisions taken by the respective Council in February 2022.
The purpose of the Joint Committee at present is to enable the two Council's to undertake joint recruitment process for Chief Officers of the Council's.
The Joint Committee will not at present undertake any other function than those defined within the terms of reference below and as defined by law.
The Constitution for the Joint Committee includes a set of standing orders that takes precedence over the respective constitutional documents of each of the two councils. However, where the Constitution for the Joint Committee is silent on an issue, the Constitution of each respective Council will take precedence.
The purpose and functions of the Joint Appointments Committee are :
- To agree the procedures for the appointment to any roles listed in
 - To appoint Chief Executive, Deputy Chief Executive's, Strategic Director, and Heads of Service ("Chief Officers") in line with adopted procedures; and
 - To recommend to Council the appointment of the Head of Paid Service, Monitoring Officer or Chief Finance Officer in line with adopted procedures.

11.03 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the members of a joint committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to Cabinet.

- (c) If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

11.04 Delegation to and from other local authorities

- (a) The Council may delegate non-Executive functions to another local authority or, in certain circumstances, the Cabinet of another local authority.
- (b) Cabinet may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

11.05 Contracting out

Cabinet may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

ARTICLE 12 - OFFICERS

Chapter 8 DETR Guidance

12.01 Management structure

- (a) **General.** The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Council will engage persons for the following posts, who will be designated chief officers and will therefore be recruited as set out within the officer employment procedure rules:

Chief Executive
Deputy Chief Executive
Strategic Director
Head of Finance
Head of Digital & Customer Services
Head of People & Communications
Head of Place, Arts & Economy
Head of Safer Communities & Leisure
Head of Neighbourhood & Assets
Head of Housing
Head of Governance
Head of Local Government Re-Organisation

- (c) **Head of Paid Service, Monitoring Officer and Chief Financial Officer.** The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Head of Finance	Chief Finance Officer
Head of Governance	Monitoring Officer

Such posts will have the functions described in Article 12.02-12.04 below.

- (d) **Restriction on Functions.** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if they are recognised as a qualified Accountant.
- (e) **Structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.
- (f) The Council has appointed an Information Governance Manager to act as Data Protection Officer for the Council.
- (g) The legal responsibility for asset management is the responsibility of the Deputy Chief Executive.

12.02 Functions of the Head of Paid Service

The Head of Paid Service will report to Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

Head of Paid Service (Chief Executive) will be the Returning Officer, Electoral Registration Officer and any other electoral officer related roles, to include keeping Polling Districts and Polling Places under regular review and amending any such arrangements where there is an operational need, prior to the next compulsory review of Polling Places and Polling Districts.

12.03 Functions of the Monitoring Officer

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council or to the Cabinet in relation to an executive function if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Local Standards Framework.** The Monitoring Officer will undertake the work as required by the Local Standards Framework.
- (e) **Proper officer for access to information.** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether Executive decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (g) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, probity and policy framework issues.
- (h) **Contributing to corporate management.** The Monitoring Officer will contribute to the corporate management of the Council.

12.04 Functions of the Chief Finance Officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to Council or to the Cabinet in relation to an executive function and the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful

expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

- (b) **Administration of financial affairs.** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, financial impropriety, probity and budget and policy framework issues.
- (e) **Give financial information.** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

12.05 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer

The Council will provide the Head of Paid Service, Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

12.06 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member_Relations set out in Part 5 of this Constitution.

12.07 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Rules set out in Part 4 of this Constitution.

ARTICLE 13 - DECISION MAKING

Chapter 7 DETR Guidance

13.01 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

13.02 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights and in particular Articles;
 - Right to a fair hearing
 - Right to respect for private and family life, the home and correspondence (Article 8)
 - Freedom of thought, conscience and religion (Article 9)
 - Freedom of expression (Article 10)
 - Freedom of assembly and association (Article 11)
 - No discrimination on grounds of age, sex, race colour, religion, property, birth status, association with a national minority etc (Article 14)
 - Right to property (Article 1 of Protocol of Number 1)
 - Right to free elections (Article 3 of Protocol of Number 1)
 - Equality Bill
- (d) a presumption in favour of openness; and
- (e) clarity of aims and desired outcomes;

13.03 Types of decision

- (a) Decisions reserved to Council. Decisions relating to the functions listed in Article 4.02 will be made by the Council and not delegated.
- (b) Key decisions.
A Cabinet decision which is likely to:-
A key decision means a decision made in the exercise of an executive function by any person (including officers) or body which meets one or more of the following conditions:

(1) The decision is likely to result in the Council incurring expenditure or the making of savings in excess of the value of the threshold for Goods & Services in England as set out in the Procurement Act 2023 (currently £207,720 with VAT or £173,100 excluding VAT). Excluded from this are all loans to banks or other financial institutions made in accordance with the Treasury Management Strategy.

Officers' delegated powers to make The Cabinet decisions are subject to the key decision/call-in regime where it is likely that the Council would incur expenditure or make savings above the threshold of the value of the threshold for Goods & Services in England as set out in the

Procurement Act 2023 (currently £207,720 with VAT or £173,100 excluding VAT).

In relation to letting contracts the key decision is the proposal to let a contract for a particular type of work. The subsequent decision to award the contract to a specific contractor will not be a key decision provided the value of the contract does not vary above the estimated amount by more than 10% for contracts with a value of up to £500,000 or 5% for contracts of over £500,000;

(2) The decision is likely to be significant in terms of its effects on communities living or working in any two or more Wards.

In considering whether a decision is likely to be significant, a decision-maker will need to consider the strategic nature of the decision and whether the outcome will have an impact, for better or worse on the amenity of the community or quality of service provided by the Council to a significant number of people living or working in the locality affected.

(c) Cabinet decisions

- i. A Cabinet decision is any decision taken by Cabinet or by a Portfolio Holder or officer to whom the function is delegated (including key decisions)
- ii. A Cabinet decision taker may only take a Cabinet decision in accordance with the requirements of the Cabinet procedure rules set out in Part 4 of this resolution
- iii. A Cabinet decision must be recorded by way of a written statement including:-
 - (a) a record of the decision
 - (b) a record of the reasons for the decision
 - (c) details of any alternative options considered and rejected by the decision taker at the time the decision was made (including the recommendations of any Overview & Scrutiny Committee)
 - (d) a record of any conflict of interest in relation to the decision which is declared by an individual decision maker or by a member of the decision making body
 - (e) in respect of any declared conflict of interest a note of any dispensation granted by the Standards Committee

13.04 Decision making by the Council

Subject to Article 13.08, the Council meeting will follow the Procedure rules (unless suspended) set out in Part 4 of this Constitution when considering any matter.

13.05 Decision making by the Cabinet

Subject to Article 13.08, Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.06 Decision making by Overview and Scrutiny Committees

Overview and Scrutiny committees, as defined in Article 6, will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.07 Decision making by other committees and sub-committees established by the Council

Subject to Article 13.08, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

13.08 Decision making by Council bodies acting as tribunals

The Council, a councillor or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights

ARTICLE 14 - FINANCE, CONTRACTS AND LEGAL MATTERS

14.01 Financial management

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 4 of this Constitution.

14.02 Contracts

Every contract made by the Council will comply with the Code of Procure Practice set out in Part 4 of this Constitution.

14.03 Legal Proceedings

Authority to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council is delegated to Officers in accordance with the Scheme of Delegation, (Part 3)

Otherwise authority so to act is given to the Monitoring Officer in consultation with the relevant Chief Officer (as defined in Article 12.01 (b)) and a solicitor acting for the Council except that where the institution of legal proceedings (other than debt collection) is proposed in the High Court Authority to so act is only given by specific authority of Cabinet.

14.04 Authentication and signing of documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or Chief Executive or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any Contract entered into on behalf of the local authority in course of the discharge of an executive function shall be made in writing. Any Goods' contracts with a Whole Life Cycle of six years or more and all 'Works' contracts, must be made under the common seal of the Council.

Any reference to the signing of documents in this Article, or the wider Constitution of the Council, includes the use of an electronic signature. Any person authorised to sign on behalf of the Council is therefore also authorised to do so by electronic means.

14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer (or in their absence the Chief Executive) or

some other person authorised by them.

Any reference to the Common Seal in this Article, or the wider Constitution of the Council, includes an electronic seal incorporating the design of the Common Seal. Any person authorised to affix the Common Seal is therefore also authorised to do so by electronic means.

ARTICLE 15 - REVIEW AND REVISION OF THE CONSTITUTION

15.01 Duty to monitor and review the Constitution

The Monitoring Officer and Standards Committee will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

15.02 Protocol for monitoring and review of constitution by the Monitoring Officer and Standards Committee.

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

- (a) observe meetings of different parts of the Councillor and officer structure;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with them by Councillors, officers, the public and other relevant stakeholders; and
- (d) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

15.03 Changes to the Constitution

- (a) **Approval.** Changes to the Constitution will only be approved by the Council.
- (b) **Change from a Leader and Cabinet form of Executive to a Mayoral one or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

ARTICLE 16 - SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

16.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension** So far as permissible in law, all rules may be suspended by a majority vote for all meetings of the Council, Cabinet and Committee meetings.

16.02 Interpretation

The ruling of the person presiding at the meeting as to the construction or application of this Constitution or as to any proceedings of the Council, Cabinet or Committees shall not be challenged at any meeting of the Council, Cabinet or Committees. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

16.03 Publication

- (a) The Civic & Committee Services Manager & Deputy Monitoring Officer will provide a copy of this Constitution to each member of the authority on the member first being elected to the Council.
- (b) The Civic & Committee Services Manager & Deputy Monitoring Officer will ensure that a copy is available for inspection at the main council offices (Saltisford Building 1 off Ansell Way, Warwick, and can be purchased by anyone on the payment of a reasonable fee).
- (c) The Civic & Committee Manager & Deputy Monitoring Officer will ensure that the Constitution is accessible via the Council's website and is updated as necessary.