

PART 2 ARTICLES OF THE CONSTITUTION

Article 1 - The Constitution

1.1 Powers of the Council

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

1.2 The Constitution

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

1.3 Purpose of the Constitution

The purpose of the Constitution is to establish the framework for the political and corporate governance of the Council.

Article 2 - Members of the Council

2.1 Composition and Eligibility

(1) Composition

The Council will comprise 37 members, called Councillors or elected Members.

(2) Eligibility

Only registered voters of the District or those living or working there will be eligible to hold the office of Councillor.

2.2 Election and Terms of Councillors

The regular election of Councillors will be held on the first Thursday in May every four years from ~~2011~~2015. 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 ordinary election.

2.3 Roles and Responsibilities of all Councillors;

(1) Key roles

All Councillors will:-

- (i) be the ultimate policy makers and carry out a number of strategic and corporate management functions;
- (ii) act in accordance with their roles and responsibilities as in Part 5 of the Constitution – Codes and Protocols;
- (iii) represent their communities and bring their views into the Council’s decision-making process, becoming the advocate of and for their communities;
- (iv) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- (v) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
- (vi) be available to represent the Council on other bodies;
- (vii) maintain the highest standards of conduct and ethics;
- (viii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (ix) effectively represent the interests of their ward and of individual constituents; and
- (x) respond to constituents’ enquiries and representations, fairly and impartially.

(2) Rights and Duties

These are dealt with in detail in Part 5 – Codes and Protocols and Part 4.2, Access to Information Procedural Rules.

2.4 Members’ Code of Conduct

Councillors will at all times observe the Council’s Members’ Code of Conduct and the Protocols on Member/Officer Relations etc. set out in Part 5 of this Constitution.

2.5 Allowances

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

Article 3 - Citizens and the Council

3.1 Citizens' Rights

Citizens have the following rights:

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

(1) Petitions

- (i) Citizens on the electoral roll for the area have the right to sign a petition to request a referendum for an elected mayor form of governance arrangements.
- (ii) The Council has also adopted a Petition Scheme which will enable citizens to submit petitions to the authority.

(2) Information

Citizens have the right to:-

- (i) attend meetings of the Council, the Executive and its Committees except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
- (ii) find out from the List of Key Decisions what decisions will be taken by the Executive and when;
- (iii) see reports and background papers and any records of decisions made by the Council, the Executive and its Committees, except where confidential or exempt information is likely to be disclosed; and
- (iv) inspect the Council's accounts and make their views known to the external auditor, at the appropriate time.

(3) Participation

Citizens have the right to:-

- (i) Contribute to investigations by Scrutiny Committees when invited;
- (ii) Vote at local elections if they are registered.

(4) Complaints

Citizens have the right to complain to:-

- (i) the Council itself under its Complaints Scheme and if dissatisfied with the outcome to the Ombudsman.
- (ii) the Monitoring Officer about breaches of the Members' Code of Conduct.

3.2 Citizens' Responsibilities

Citizens must not harass, be violent, abusive or threatening to Councillors or Council employees and must not wilfully harm things owned by the Council, Councillors or Council employees.

The Council will take appropriate action where necessary.

3.3 Consultation with Citizens

The Council is fully committed to engaging with all stakeholders in respect of its functions and decisions which are being made. To achieve this it has a Citizens' Panel, which the Council now consults.

3.4 Other Methods of Consultation

Other methods of consultation and engagement are also routinely used. If citizens wish to be involved in any part of the process contact should be made with the Customer Services at the Council.

Article 4 - The Council

4.1 Definitions

- (1) The Budget and Policy Framework

The following plans and strategies of the Council make up the Policy Framework:

Borrowing and Investment Strategy
Capital Strategy
Corporate Plan
Crime and Disorder Reduction Strategy
Health and Well-Being Strategy
Housing Strategy
Licensing Policy
Local Plan
Pay Policy Statement
Sustainable Community Strategy
Treasury Management Strategy

(2) Budget

The Budget includes: the allocation of financial resources to different services and projects; proposed contingency funds, the Council Tax base, setting the Council Tax, the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits. The Council's approval of the Budget will be dealt with in accordance with the Budget and Policy Framework Procedure Rules.

4.3 Council Meetings

There are three types of Council meeting:

- (1) The Annual Meeting;
- (2) Ordinary Meetings;
- (3) Extraordinary Meetings;

They will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

Article 5 - Chairing the Council

5.1 The Role and Function of the Chairman

- (1) The Council will elect the Chairman annually.
- (2) The Chairman of the Council, and in his/her absence the Vice-Chairman, will have the following roles and functions:-
 - (i) To uphold and promote the purposes of the Constitution and to interpret the Constitution when necessary subject to appropriate advice;

- (ii) 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;
- (iii) 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 the Executive are able to hold the Executive members to account;
- (iv) To promote public involvement in the Council's activities;
- (v) To be the conscience of the Council; and
- (vi) To attend such civic and ceremonial functions as the Council and Chairman determines appropriate.

Article 6 - Scrutiny Committee

6.1 Establishment of Scrutiny Committee

The Council will appoint three Scrutiny Committees and a Budget Scrutiny Committee to discharge the functions conferred by section 21 of the Local Government Act 2000 and regulations under section 32 of the Local Government Act 2000. The Council will determine the Terms of Reference of the Scrutiny Committees.

6.2 General Role

Within the Terms of Reference, the three Scrutiny Committees have the following functions:-

- (1) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (2) make reports and/or recommendations to the Council and/or the Executive in connection with the discharge of any functions;
- (3) consider any matter affecting the area or its inhabitants;
- (4) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive; and
- (5) assist the Council and the Executive with the development of future policies and strategies.

6.3 Specific Functions

(1) Finance

Each of the three Scrutiny Committees and Budget Scrutiny Committee may exercise overall responsibility for the finances, if any, made available to them.

(2) Annual Report

Scrutiny must report annually to Council on its work and make recommendations for future work programmes and amended working methods if appropriate.

(3) Officers

All senior officers of the Council will support the Scrutiny Committees.

(4) Petitions

Deal with petitions referred to it under Part 8 of the Constitution that contain at least 350 signatures requiring a relevant employee to give evidence at a Scrutiny Committee on a matter for which the officer is responsible as part of their job.

6.4 Proceedings of the Scrutiny Committees

Each of the three Scrutiny Committees will conduct their proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Article 7 - The Executive

7.1 The Role of the Executive

The Executive will carry out all of the Council's functions which are not the responsibility of any other part of the Council, whether by law, or under this Constitution.

7.2 Form and Composition

The Executive will consist of the Leader together with the Deputy Leader and a maximum of 8 other Councillors appointed to the Executive by the Leader.

7.3 The Leader

The Leader will be a councillor elected to the position of Leader by the Council at the Annual Council Meeting for either an annual or four year term following the ordinary elections until:-

- (1) he/she resigns from the office; or
- (2) he/she is no longer a Councillor; or
- (3) he/she is removed from office by resolution of the Council.

7.4 The Deputy Leader

The Deputy Leader will be a councillor appointed to the position of Deputy Leader by the Leader. The Deputy Leader will be appointed to the position until:

- (1) he/she resigns from office; or
- (2) he/she is no longer a Councillor; or
- (3) he/she is removed from office by the Leader if he/she thinks fit;
- (4) the next ordinary elections.

7.5 Other Executive Members

Other Executive members shall hold office until:-

- (1) they resign from office; or
- (2) they are no longer Councillors; or
- (3) they are removed from office, either individually or collectively.

7.6 Proceedings of the Executive

- (1) Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.
- (2) From time to time the Executive will meet informally in accordance with the rules in this Constitution. These meetings are called "Cabinet" meetings.

7.7 Responsibility and Functions

The Council will maintain a list in Part 3 of this Constitution setting out whether the Executive, individual Executive members, officers or joint arrangements are responsible for the exercise of particular executive functions.

Article 8 – Regulatory and other Committees

8.1 Regulatory and other Committees

The Council will appoint Committees to discharge the functions described in Part 3 of this Constitution. These committees include committees for Licensing and Planning functions.

Article 9 - The Standards Committee

9.1 Standards Committee

The Council meeting may establish a Standards Committee.

9.2 Composition

- (1) The Standards Committee will have a membership of six Councillors as determined by Council and two co-opted members. It will be politically balanced.
- (2) One of the co-opted members shall act as Chairman of the Standards Committee and this appointment will be made at the Annual Meeting of the Council.
- (3) The Councillors will be appointed to the Standards Committee at the Annual Meeting of the Council each year. The co-opted members will be appointed until the next Annual Council Meeting. The Council may agree to extend this period as it sees fit.

9.3 Role and Function

The Standards Committee will have the roles and functions as set out in Part 3 of the Constitution.

Article 10 - Area Committees and Forums

10.1 Area Committees

- (1) The Council may appoint such area committees as it sees fit, if it is satisfied that to do so will ensure improved service delivery and more efficient, transparent and accountable decision making.
- (2) The Council will consult with relevant parish or town councils when considering whether and how to establish area committees.

10.2 Present Position

At the present time the Council has not appointed any area committees.

Article 11 - Joint Arrangements

11.1 Joint Arrangements

- (1) The Council may establish joint arrangements with one or more local authorities and/or their executives to exercise functions which are not executive functions in any of the participating authorities or to advise the Council. Such arrangements may involve the appointment of a joint committee with those other local authorities.
- (2) The Executive 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 those other local authorities.
- (3) Except as set out below, the Executive may only appoint Executive Members to a joint committee and those Councillors need not reflect the political composition of the local authority as a whole.
- (4) The Executive may appoint members to a joint committee from outside the Executive if the joint committee has functions for only part of the area of the Council, and that part area is smaller than two-fifths of the Council by area or population. In such cases, the Executive may appoint to the joint committee any Councillor who is a member for a ward, which is wholly or partly contained within the area. In this case the political balance requirements do not apply to such appointments.
- (5) 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.

11.2 Combined Authority

The Council ~~is a member of the D2 Joint Committee, Sheffield City Region and Derby and Debyshire Combined Authorities~~ has indicated a preference to be a constituent member of the potential North Midlands Combined Authority and non-constituent member of Sheffield City Region. It is also a member of the D2 Joint Committee.

11.3

Access to information

- (1) The Access to Information Rules in Part 4 of this Constitution apply.
- (2) If all the members of a joint committee are members of the Executive in each of the participating authorities then its access to information arrangements is the same as that applied to the Executive.
- (3) If the joint committee contains members who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.
- (4) Not all functions can be delegated in this way unless prevented by law.

11.4 Delegation to and from other Local Authorities

- (1) The Council may delegate non-executive functions to another local authority or, in appropriate circumstances, the Executive of another local authority.
- (2) The Executive may delegate executive functions to another local authority or the executive of another local authority in certain circumstances.
- (3) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.
- (4) Not all functions can be delegated in this way unless prevented by law.

11.5 Contracting Out

In certain circumstances where legislation permits, functions may be contracted out.

11.5 Strategic Alliance Joint Committee

The Council has established a Joint Committee with North East Derbyshire District Council called the Strategic Alliance Joint Committee whose role it will be to take forward the strategic alliance transformation programme.

The Joint Committee will comprise nine members from either side and chairmanship will rotate annually between both councils. The Joint Committee will have no decision-making powers but may make recommendations back to its respective councils.

Article 12 – Officers

12.1 Management Structure

Appointment of staff cannot be the responsibility of the Executive. Appointment of staff below Assistant Director level must be the responsibility of the Head of Paid Service or nominee. Councils must include a standing order on the appointment of Directors, the people who can or must be involved in the appointment of officers and disciplinary action against the Head of Paid Service, the Chief Financial Officer and Monitoring Officer by virtue of the Local Authorities (Standing Orders) Regulations 1993 and 2001.

(1) General

The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions, subject to receiving reports from the Head of Paid Service, and comply with procedural rules in Part 4 of the Constitution.

(2) Head of Paid Service, Monitoring Officer and Chief Financial Officer

The Council has designated the following posts:-

<u>Post</u>	<u>Designation</u>
Chief Executive Officer	Head of Paid Service
Executive Director – Operations	Chief Financial Officer

Assistant Director – Monitoring Officer
Governance and Solicitor to
the Council and Monitoring
Officer

The duties of both the Monitoring Officer and Chief Financial Officer (apart from the administration of the financial affairs of the Council) must be carried out personally, but can be carried out by a deputy nominated by them in cases of absence or illness. It is the function of the relevant officer to appoint such deputy, not the Council.

(3) Structure

The Council upon advice from 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.

12.2 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.

12.3 Functions of the Chief Executive Officer and Head of Paid Service

(1) Discharge of Functions by the Council

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

(2) Restrictions and Functions

The Head of Paid Service may not be the Monitoring Officer or the ~~Director of Corporate Resources~~ Chief Financial Officer.

(3) Proper Officer for Access to Information

The Chief Executive Officer in conjunction with the Monitoring Officer is to ensure that the Council, Executive or Committee decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.

(4) Advising whether the Executive's Decisions are within the Budget and Policy Framework

The Chief Executive Officer in conjunction with the Monitoring Officer and the ~~Director of Corporate Resources~~ Chief Financial Officer will advise whether decisions of the Council, Executive or Committees are in accordance with the Budget and Policy Framework.

12.4 Functions of the Monitoring Officer

(1) 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.

(2) Ensuring Lawfulness and Fairness of Decision Making

After consulting with the Head of Paid Service and the ~~Director of Corporate Resources~~ Chief Financial Officer, the Monitoring Officer will report to Council or the Executive in relation to an executive function, if the Monitoring Officer considers 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.

(3) 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.

(4) Conducting Investigations

The Monitoring Officer will administer the process for determining complaints against Members.

(5) Providing Advice

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions and in relation to maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Councillors.

(6) Restrictions on Posts

The Monitoring Officer cannot be the ~~Director of Corporate Resources~~ Chief Financial Officer or the Head of Paid Service.

12.4 Functions of the Chief Financial Officer

(1) Ensuring Lawfulness and Financial Prudence of Decision Making

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Financial Officer will report to the Council or to the Executive in relation to an executive function and the Council's external auditor if he considers 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.

(2) Administration of Financial Affairs

The Chief Financial Officer will have responsibility for administration of the financial affairs of the Council.

(3) Contributing to Corporate Management

The Chief Financial Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

(4) Providing Advice

The Chief Financial Officer will provide advice on scope of powers and authority to take decisions and in relation to maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Councillors and will support and advise Councillors and officers in their respective roles.

(5) Give Financial Information

The Chief Financial Officer will have the responsibility for publishing financial information to the media, members of the public and the community.

12.5 Duty to provide sufficient resources to the Head of Paid Service, Monitoring Officer and ~~Director of Corporate Resources~~ Chief Financial Officer

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

Article 13 - Decision Making

13.1 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.

13.2 Principles of Decision Making

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

- (1) proportionality (i.e., the action must be proportionate to the desired outcome);
- (2) due consultation and the taking of professional advice from officers;
- (3) respect for human rights;
- (4) a presumption in favour of openness;
- (5) clarity of aims and desired outcomes;
- (6) regard to the Council's duties with regard to equal opportunities;
- (7) an explanation of options that were considered and reasons for the decision; and
- (8) consideration of all relevant factors;
- (9) be made in the best interests of the District as a whole;

13.3 Types of Decision

Decision Making

Council, Executive and Committee will make their decisions as referred to in Part 3 of the Constitution and these will be carried out as in accordance with procedures in Part 4.

13.4 Decision Making by Council Bodies acting as Tribunals

The Council 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 and/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

14.1 Financial Management

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

14.2 Contracts

Every contract made by the Council will comply with the Contracts Standing Orders set out in Part 4 of this Constitution.

14.3 Legal Proceedings

The ~~Assistant Director—Governance and~~ Monitoring Officer is authorised 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 or in any case where the ~~Solicitor to the Council~~ she considers that such action is necessary to protect the Council's interests.

14.4 Authentication of Documents

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

14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the ~~Assistant Director—Governance and~~ 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 ~~Assistant Director—Governance and~~ Monitoring Officer, should be sealed. The affixing of the Common Seal will be attested by the Chief Executive Officer, the ~~Assistant Director—Governance and~~ Monitoring Officer or some other person authorised by either.

Article 15 - Review and Revision of the Constitution

15.1 Duty to Monitor and Review the Constitution

The Standards Committee, on the advice of the Chief Executive Officer, Monitoring Officer and the Chief Financial Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given effect.

15.2 Changes to the Constitution

(1) Approval

Changes to the Constitution will only be approved by the Council after consideration of the proposal by Standards Committee.

(2) Minor amendments

The Chief Executive Officer may approve any minor amendments to the Constitution (in accordance with his delegated power) put to him by the Monitoring Officer.

(3) Procedure for amendment of the Constitution

Proposals from a Councillor or a member of the public or an officer to change part or parts of the Constitution must be submitted in writing to the Monitoring Officer for consideration. The Monitoring Officer will consider the proposals and if the Monitoring Officer is of the opinion that the proposal is not lawful then the proposal shall be rejected by the Monitoring Officer. The Monitoring Officer shall advise the proposer as to the reason for the decision. Otherwise the Monitoring Officer shall consult the Chief Executive Officer and Chief Financial Officer on the proposal and shall prepare a report, incorporating the comments of the Chief Executive Officer and the Chief Financial Officer for consideration by the Standards Committee and the Council.

Article 16 - Suspension, Interpretation and Publication of the Constitution

16.1 Suspension of the Constitution

(1) 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.

(2) 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.

(3) Rules Capable of Suspension

The following Rules may be suspended in accordance with Article 16.1;

- any part of the Contracts Standing Orders but only following the advice of the three statutory officers;
- any part of the Financial Regulations, but only following the advice of the Chief Financial Officer; and
- any part of the Council Procedure Rules as specified therein.

16.2 Interpretation

The ruling of the Chairman of the Council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1 and to the advice of the Chief Executive Officer, Monitoring Officer and Chief Financial Officer.

16.3 Publication

- (1) The Chief Executive Officer will ensure that a version of this Constitution is available for Members on the web site and that the Leader and Deputy Leader have one paper copy and that paper copies are deposited in the Group Offices.
- (2) The Chief Executive Officer will ensure that copies of the Constitution are available for inspection at The Arc and other appropriate locations, and on the Council's website and can also be purchased by members of the local press and the public on payment of a reasonable fee.
- (3) The Chief Executive Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary within three months of the adoption of this Constitution or of any change to this Constitution approved by the Council.