

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. 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 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 4.2 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 and items to be considered in Private document, 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 Local Government and Social Care 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 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 & Investment Strategy
Budget
Capital Strategy
Council's Ambition
Crime & Disorder Reduction Strategy
Health and Wellbeing Strategy
Housing Strategy
Business Growth 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 Rules.

4.3 Council Meetings

There are three types of Council meeting:-

The Annual Meeting
Ordinary Meetings
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 Chair

- (1) The Council will elect the Chair annually.

The Chair of the Council, and in his/her absence the Vice-Chair, 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 Chair determines appropriate.

Article 6 - Scrutiny Committee

6.1 Establishment of Scrutiny Committee

The Council will appoint four Scrutiny Committees to discharge the functions conferred by Part1A, section 9F-9FI of the Local Government Act 2000 and subsequent amendments. The Council will determine the Terms of Reference of the Scrutiny Committees.

The Council will also ensure that one of the Scrutiny Committees is designated to discharge the functions under s19 of the Police and Justice Act 2006 as its crime and disorder committee.

6.2 General Role

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

- (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 the Council and/or the Executive, 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 the Executive; and

- (v) assist the Council and the Executive with the development of future policies and strategies.
- (vi) consider crime and disorder matters raised under Councillor Call for Action (CCfA) in accordance with the regulations and procedures agreed by Council as set out in Part 4.5 of this Constitution.

6.3 Specific Functions

(1) Policy Development and Review

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

(2) Scrutiny

- (i) review and scrutinise the decisions, initiatives and projects and performance of the Executive and/or Committees and Council officers in relation to individual decisions, initiatives and projects;
- (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 Executive and/or Committees and officers about their decisions and performance, 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 Executive 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 and relevant partners in the area and invite reports from them by

requesting (and in the case of the Community Safety Partnership requiring them) to address the relevant Scrutiny Committee and local people about their activities and performance;

- (vi) require the attendance of an officer or employee of the responsible authority or of a co-operating person or body in order to answer questions, when considering crime and disorder matters;
- (vii) question and gather evidence from any person with their consent;
- (viii) receive requests to consider issues through local Councillors as set out in Part 4.5 Scrutiny Procedure Rules of this Constitution.

(3) Finance

Each of the four Scrutiny Committees may exercise overall responsibility for the finances, if any, made available to them.

(4) Annual Report

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

(5) Officers

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

(6) Petitions

Each of the four Scrutiny Committees will be able to deal with petitions referred to them under Part 7 of the Constitution that contain at least 350 signatures of residents in the District, 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 four Scrutiny Committees will conduct their proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4.5 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:-

- (i) he/she resigns from the office; or
- (ii) he/she is no longer a Councillor; or
- (iii) 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:-

- (i) he/she resigns from office; or
- (ii) he/she is no longer a Councillor; or
- (iii) he/she is removed from office by the Leader if he/she thinks fit,
- (iv) the next ordinary elections.

7.5 Other Executive Members

Other Executive Members shall hold office until:-

- (i) they resign from office; or
- (ii) they are no longer Councillors; or

(iii) they are removed from Office, either individually or collectively.

7.6 Junior Executive Members

Non-Executive Members may be appointed as Junior Executive Members to assist the Executive Members. Junior Executive Members may not exercise any of the powers of the Executive Members.

7.7 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.

7.8 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 6 Councillors, as determined by Council and 1 co-opted Member. It will be politically balanced.

- (2) The co-opted Member shall act as Chair 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 Member 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 Arrangements to promote well-being

- (1) The Council may work with other councils, public bodies, commercial and voluntary organisations, to promote the economic, social or environmental well-being of the District.

11.2 Joint Arrangements

Joint arrangements for Council Functions

- (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.

Joint arrangements for Executive Functions

- (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 and will reflect the political balance requirements set out in the Local Government and Housing Act 1989.
- (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) The Council and the Executive must maintain a list and details of the joint arrangements they have established.

11.3 Access to information

- (1) The Access to Information Rules in Part 4.2 of this Constitution apply to joint committees.
- (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.

11.4 Delegation to and from other Local Authorities

- (1) The Council or the Executive may delegate non-executive functions to another local authority or, in appropriate circumstances, the executive of another local authority.
- (2) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.
- (3) 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.

Article 12 – Officers of the Council

12.1 Management Structure

12.1.1 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 4.9 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	Head of Paid Service
Service Director Finance and Section 151 Officer*	Chief Financial Officer/Section 151 Officer *
Service Director Corporate and Legal Services and Monitoring Officer	Monitoring Officer

*Section 151 of the Local Government Act 1972

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 Employee Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5.3 and 5.4 of this Constitution.

12.3 Functions of the 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 Chief Financial Officer.

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

The Monitoring Officer and the Chief Financial Officer will advise whether decisions of the Council, Executive or committees are in accordance with the Budget and Policy Framework, in consultation with the relevant Assistant Director.

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 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) Proper Officer for Access to Information

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 unless they are exempt or confidential reports and background papers.

(4) 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.

(5) Conducting Investigations

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

(6) 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.

(7) Restrictions on Posts

The Monitoring Officer cannot be the Chief Financial Officer or the Head of Paid Service.

12.5 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 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.

(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.

12.6 Duty to Provide Sufficient Resources to the Head of Paid Service, Monitoring Officer and 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:-

- (i) proportionality (i.e., the action must be proportionate to the desired outcome),
- (ii) due consultation and the taking of professional advice from officers,
- (iii) respect for human rights,
- (iv) a presumption in favour of openness,
- (v) clarity of aims and desired outcomes,
- (vi) regard to the Council's duties with regard to equal opportunities,
- (vii) an explanation of options that were considered and reasons for the decision; and
- (viii) consideration of all relevant factors,
- (ix) be made in the best interests of the District as a whole.

13.3 Types of Decision

(1) 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 4.7 of this Constitution.

14.2 Contracts

Every contract made by the Council will comply with the Contracts Standing Orders set out in Part 4.8 of this Constitution.

14.3 Legal Proceedings

The 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 he 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 Monitoring Officer 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

- (1) 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.

- (2) 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 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 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 Monitoring Officer may approve any minor amendments to the Constitution in accordance with delegated power.

(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 Head of Paid Service and Chief Financial Officer on the proposal and shall prepare a report, incorporating the comments 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 Chair 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 Monitoring Officer, Governance and Civic Manager and Chief Financial Officer.

16.3 Publication

- (1) The Monitoring Officer will ensure that a version of this Constitution is available for Members, and the public, on the Council's website.