

**THE CONSTITUTION**

**OF**

**WARWICKSHIRE COUNTY COUNCIL**



**Edition: April 2018**

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## **The Council's Constitution**

The Warwickshire County Council has agreed a constitution which sets out:

- how the council operates;
- how decisions are made;
- who makes decisions;
- how citizens, businesses and other organisations can participate; and
- the procedures which are followed to ensure the council is efficient, transparent and accountable to local people.

Some of these processes are required by the law, while others are a matter for the council to choose.

## **The Constitution is divided into Six Parts**

**Part 1** gives a broad overview of how the council is organised, how decisions are made and how the public can participate in the decision-making process.

**Part 2** sets out the particular responsibilities of the various council bodies and officers in more detail.

**Part 3** sets out the detailed procedural rules that govern the conduct of the council's business.

**Part 4** contains the codes of conduct which govern the standards that county councillors, co-opted members and officers should follow when acting for the council.

**Part 5** sets out the allowances which are payable to county councillors and co-opted members.

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## **ARTICLE 1 – THE CONSTITUTION**

### **1.1 Powers of the Council**

The council will exercise 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 Warwickshire County Council.

### **1.3 The Purpose of the Constitution**

The purpose of the constitution is to:

1. Help the council and councillors provide clear leadership to the community in partnership with citizens, businesses and other organisations;
2. Support the active involvement of citizens in the process of local authority decision-making;
3. Encourage openness and transparency by ensuring that those who make decisions are clearly identifiable to local people, and that they explain the reason for decisions;
4. Promote high standards of conduct by members and officers and provide a means of holding decision-makers to public account; and
5. Enable efficient and effective decision-making and improve the delivery of services to the community.

## **ARTICLE 2 – MEMBERS OF THE COUNCIL**

### **2.1 Composition and Eligibility**

#### **(a) Composition**

The council will comprise 62 elected members, otherwise called councillors. Councillors will be elected by the voters of each electoral division.

#### **(b) Eligibility**

Only registered voters of the county 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 normally be held on the first Thursday in May every four years beginning in 2013. The term 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.

### **2.3 Roles and Functions of All Councillors**

#### **(a) Key Roles**

All councillors will:

- represent the people of Warwickshire, the interests of their electoral division and of individual constituents;

- provide community leadership and contribute to the good governance of the area;
- actively encourage community participation and citizen involvement in decision-making;
- collectively be the ultimate policy makers and participate in the governance and management of the council; and
- promote and maintain the highest standards of conduct and ethics in the conduct of council business.

### **(b) Rights and Duties**

- i. Councillors will have 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.
- ii. Councillors will not make public information which is confidential or exempt without the consent of the council or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.
- iii. For these purposes, “confidential” and “exempt” information are defined in the standing orders in part 3 of this constitution.

## **2.4 Conduct**

Councillors and co-opted members will at all times observe the Members’ Code of Conduct and the Protocol on Member/Officer Relationships set out in part 4 of this constitution.

## **2.5 Allowances**

Councillors and co-opted members will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in part 5 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 part 3 of this constitution.

### **(a) Voting and Petitions**

Citizens on the electoral roll for the area have the right to vote. They may also sign a petition to request a referendum for an elected mayor form of constitution.

Citizens may also present petitions to certain member bodies. The arrangements for receipt of petitions are set out in Part 3 Section 1: Standing Orders.

### **(b) Information**

Citizens have the right to:

- i. attend meetings of the council, the cabinet, and any committees and leader and portfolio holder decision-making sessions except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
- ii. find out from the forward plan what key decisions will be taken by the executive or officers and when;

- iii. see reports and background papers, and any records of decisions made by the council, its committees and the executive which are open to the public; and
- iv. inspect the council's accounts during the audit process and make their views known to the external auditor.

### **(c) Participation**

Citizens have the right to participate in public interest debates, public question time where provided for in standing orders and, where appropriate, in the investigations by overview and scrutiny committees.

### **(d) Complaints**

Citizens have the right to complain to:

- i. the council itself under its complaints procedure;
- ii. the Ombudsman after using the council's own complaints procedure; and
- iii. the Audit and Standards Committee of the council about a breach of the
- iv. Members' Code of Conduct.

## **3.2 Citizens' Responsibilities**

Citizens must not be violent, abusive or threatening to councillors or officers and must not damage property owned by the council, councillors or officers.

## **ARTICLE 4 – THE FULL COUNCIL**

### **4.1 Meanings**

#### **(a) Policy Framework**

The policy framework means the following plans and strategies:

- i. those required to be adopted by the full council by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any regulations under section 32 of the Local Government Act 2000; and
- ii. any other plans and strategies which the council may decide from time to time to adopt as part of its policy framework.

A full list of the plans and strategies adopted by the council as part of the policy framework is set out in part 2 of this constitution.

- (a) The budget includes the allocation of capital and revenue resources, the precept level, the council tax, the planned use of reserves, the county council's borrowing limit and the virement limits.
- (b) Executive functions mean those functions which by law must be the responsibility of the executive.
- (c) Non-executive functions mean those functions which by law must not be the responsibility of the executive.
- (d) Local choice functions means those functions which the council may decide to exercise itself or delegate to any part of the council including the executive. A list of local choice functions is included in part 2 of this constitution.

## **4.2 Functions of the full Council**

Only the full council will exercise the following functions:

- (a) adopting and changing the constitution;
- (b) approving or adopting the policy framework and the budget;
- (c) subject to the urgency procedure contained in standing orders in part 3 of this constitution, making decisions which are contrary to the policy framework or decisions which are contrary to or not wholly in accordance with the budget;
- (d) appointing the leader of the council;
- (e) in relation to functions which are not the responsibility of the executive agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies unless the appointment is an executive function or has been otherwise delegated by the council;
- (g) adopting an allowances scheme under Article 2.5; (h) changing the name of the area;
- (h) confirming the appointment of the head of paid service, the monitoring officer and chief finance officer;
- (i) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal bills;
- (j) all local choice functions set out in part 2 of this constitution which the council decides should be undertaken by itself rather than any other person or body or other matters reserved to full council by this constitution; and
- (k) all other matters which, by law, must be reserved to the council.

The responsibilities of the full council may change from time to time and are set out in more detail in part 2 of this constitution.

## **4.3 Role and Function of the Chair**

The chair will be elected by the council annually. The chair of the council, and in his/her absence the vice-chair, will have the following roles and functions:

1. to help to uphold and promote the purposes of the constitution, and to interpret the constitution where necessary;
2. to preside over meetings of the full 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 full 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 and committee chairs to account;
4. to help to promote public involvement in the council's activities; and
5. to attend such civic and ceremonial functions as the council and he/she determines appropriate.

**ARTICLE 5 – THE LEADER, CABINET and OTHER BODIES**

The council will appoint the following:

**5.1 LEADER OF THE COUNCIL AND CABINET****(a) Role of the Leader**

The leader will carry out all of the local authority's executive functions which are not the responsibility of any other part of the local authority, whether by law or under this constitution.

**(b) Form and Composition of the Cabinet**

The leader will be responsible for the appointment of a cabinet consisting of the leader together with not less than 2 nor more than 9 other councillors. The leader may change the appointments to the cabinet at any time.

**(c) Portfolios**

The leader will allocate to each member of the cabinet responsibility for a particular portfolio. The portfolios and the role of portfolio holders are set out in part 2 of this constitution. The number and terms of reference of portfolios may be changed by the leader from time to time.

**5.2 OVERVIEW AND SCRUTINY COMMITTEES****(a) Terms of Reference**

The council will appoint at least one overview and scrutiny committee. If more than one overview and scrutiny committee is appointed then collectively the overview and scrutiny committees will cover all the functions of the council. The membership of any overview and scrutiny committee shall not include any member of the cabinet. The council may from time to time change the number and/or terms of reference of the overview and scrutiny committee(s) it appoints.

**(b) General Role**

The terms of reference and role of the overview and scrutiny committee(s) are set out in part 2 of this constitution. In summary, their role is to:

- i. assist the council and the leader and/or cabinet in the development of its budget and policy framework by considering policy issues;
- ii. review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the council's functions; and
- iii. exercise the right to call-in decisions made but not yet implemented by the leader, cabinet, portfolio holders, any area committees exercising executive functions, local members exercising executive functions and officers making key executive decisions.

**5.3 THE AUDIT AND STANDARDS COMMITTEE****(a) Composition**

The full council will appoint an Audit and Standards Committee, which will be composed of six councillors and up to four other persons (the independent members) who are not councillors or officers of the council or any other body prescribed by regulations. The independent members will be entitled to vote at meetings.

**(b) Role and Function**

The role and functions of the Audit and Standards Committee are set out in detail in part 2 of this constitution. In summary, these relate to:

- i. promoting and maintaining high standards of conduct by councillors, co-opted members and church/parent governor representatives;
- ii. monitoring the operation of and advising the council on the adoption or revision of the Members' Code of Conduct;
- iii. granting dispensations to councillors, co-opted members and church/parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- iv. supervision of politically restricted posts;
- v. oversight of internal and external audit matters, the council's arrangements for corporate governance and risk management; and
- vi. oversight of other arrangements for the maintenance of probity allocated from time to time by the council.

**5.4 REGULATORY COMMITTEE****(a) Composition**

The full council will appoint a Regulatory Committee. The seats on the committee shall be allocated proportionately to the representation of political groups and individual members on the council.

**(b) Role**

The responsibilities of the Regulatory Committee are set out in part 2 of this constitution. This committee deals primarily with planning applications, licensing and arrangements for various types of appeals and appointments to outside bodies. The council may change its responsibilities from time to time.

**5.5 OTHER COMMITTEES**

The council or the leader or the cabinet may from time to time establish such other committees as it sees fit.

The composition and responsibilities of any other committees are set out in part 2 of this constitution.

**ARTICLE 6 – JOINT ARRANGEMENTS**

- 6.1 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 advise the council. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- 6.2 The leader may establish joint arrangements with one or more local authorities and/or their executives to exercise functions which are 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.
- 6.3 Except as set out below, the leader 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.
- 6.4 The leader may appoint members to a joint committee from outside the executive 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, the leader 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; and
  - the joint committee is between a county council and a single district council and relates to functions of the executive of the county council. In such cases, the leader 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 cases the political balance requirements do not apply to such appointments.

- 6.5 Details of any joint arrangements, including any delegations to joint committees, will be found in part 2 of this constitution.

**6.6 Access to Information**

- (a) If all the members of a joint committee are members of the executive in each of the participating authorities then its access to information regime is the same as that applied to executives by regulations under sections 22 and 105 of the Local Government Act 2000.
- (b) 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.

**6.7 Delegation to and from Other Local Authorities**

- (a) The council may delegate non-executive functions to another local authority or, in certain circumstances, the executive of another local authority.
- (b) The leader may delegate executive functions to another local authority or, in certain circumstances, the executive of another local authority.

The decision whether or not to accept such delegation from another local authority shall be reserved to the full council.

**6.8 Contracting Out**

The full council, in respect of functions which are not executive functions, and the leader in respect of executive functions, 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 7 – OFFICERS

### Terminology

The use of the word “officers” means all employees and staff engaged by the council to carry out its functions.

#### 7.1 Management Structure

##### (a) General

The full council may engage such officers as it considers necessary to carry out its functions. Appointment of officers cannot be the responsibility of the leader.

##### (b) Joint Managing Directors, Monitoring Officer and Chief Finance Officer

The council will be responsible for confirming the appointment of the managing directors, the monitoring officer and chief finance officer in accordance with the Officer Employment Standing Orders in part 3 of this constitution.

##### (c) Head of Paid Service, Monitoring Officer and Chief Finance Officer

The council will designate the following posts as shown in the table below:

Post	Designation
Joint Managing Director (Resources)	Head of Paid Service
Head of Law & Governance	Monitoring Officer
Head of Finance	Chief Finance Officer

The duties of both the monitoring officer and chief finance 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.

#### 7.2 Functions of the Head of Paid Service

##### (a) Corporate Management

The head of paid service will be responsible for the corporate management of the council, and for ensuring the co-ordination of services and the provision of appropriate professional advice.

##### (b) 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 in part 6 of this constitution and may be changed from time to time.

##### (c) Appointment of Staff

The appointment of officers below strategic director or chief officer level is the responsibility of the head of paid service or their nominee.

##### (d) Discharge of Functions by the Council

The head of paid service will report to the full 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.

**(e) Restrictions on Functions**

The head of paid service may not be the monitoring officer but may hold the post of chief finance officer if a qualified accountant.

**7.3 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 full council or to the executive in relation to an executive function if he/she 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.

**(c) Contributing to Corporate Management**

The monitoring officer will contribute to the corporate management of the council, in particular through the provision of advice on legal, constitutional, procedural and probity issues.

**(d) Advising whether Executive Decisions are within the Budget and Policy Framework**

The monitoring officer will advise whether decisions of the executive are in accordance with the budget and policy framework.

**(e) Restrictions on Posts**

The monitoring officer cannot be the chief finance officer or the head of paid service.

**7.4 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 the full council or to the executive in relation to an executive function and the council's external auditor if he/she 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.

**(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 financial matters, the budget framework and financial propriety.

### **7.5 Duty to Provide Sufficient Resources to the Monitoring Officer and Chief Finance Officer**

The council will provide the 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.

### **7.6 Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relationships set out in part 4 of this constitution.

### **7.7 Employment**

The recruitment, selection and dismissal of officers will comply with the Officer Employment Standing Orders set out in part 3 of this constitution.

## **ARTICLE 8 – DECISION MAKING**

### **8.1 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 functions which are not the responsibility of the executive. The executive will issue and keep up to date a record of the body or individual responsible for executive functions. These records are set out in part 2 of this constitution and may change from time to time.

### **8.2 Principles of Decision Making**

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

- (a) proportionality (i.e. the action will be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights (see below for further details);
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes; and
- (f) explaining what options were considered and giving the reasons for the decision.

### **8.3 Types of Decision**

- (a) Decisions reserved to the full council: Decisions relating to the functions listed in Article 4.2 will be made by the full council and not delegated except to the extent permitted by that Article.
- (b) Key decisions: Key decision means a decision made in the exercise of an executive function as defined in Article 4.1 and standing orders in part 3 of this constitution.

### **8.4 Decision Making by Council Bodies, Councillors or Officers**

Any member body, councillor or officer will follow the applicable standing orders set out in part 3 of this constitution when considering any matter.

Any member body, 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 9 – FINANCE, CONTRACTS AND LEGAL MATTERS****9.1 Financial Management**

The management of the council's financial affairs will be conducted in accordance with the financial standing orders set out in part 3 of this constitution. These may change from time to time.

**9.2 Contracts**

Every contract made by the council will comply with Contract Standing Orders set out in part 3 of this constitution. These may change from time to time.

All major contracts as defined in Contract Standing Orders must either be signed by at least two designated officers of the council or made under the common seal of the council attested by at least one designated officer.

'Designated Officer' shall mean the chief executive, the strategic director for resources and any other officer authorised by either or both of them.

**9.3 Legal Proceedings**

The chief executive and strategic director for resources both have 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 or in any case where he/she considers that such action is necessary to protect the council's interest.

**9.4 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 or other person authorised by him or her, unless any enactment otherwise authorises or requires, or the council has given requisite authority to some other person.

**9.5 Common Seal of the Council**

The common seal of the council will be kept in a safe place in the custody of the chief executive. 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 chief executive or the strategic director for resources should be sealed. The affixing of the common seal will be attested by a 'designated officer' as defined in 9.2 above.

**ARTICLE 10 – REVIEW AND REVISION OF THE CONSTITUTION****10.1 Duty to Monitor and Review the Constitution**

The monitoring officer will monitor and review the operation of the constitution to ensure that the aims and principles of the constitution are given full effect.

**10.2 Changes to the Constitution****(a) Approval**

Changes to the constitution will only be approved by the appropriate body after consideration of a report by the monitoring officer. Changes to the articles and standing orders require the approval of the full council.

**(b) Change from a Leader and Cabinet Form of Executive to Other Arrangements**

The council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

**ARTICLE 11 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION****11.1 Suspension of the Constitution****(a) Limit to Suspension**

The articles of this constitution may not be suspended. The standing orders listed below may be suspended by the full council, to the extent permitted within those standing orders and the law:

Standing Orders  
Officer Employment Standing Orders

**(b) Procedure to Suspend**

A motion to suspend any standing order will not be moved without notice unless at least one half of the whole number of councillors are present and on a two thirds majority of those voting. The extent and duration of suspension will be proportionate to the result to be achieved.

**11.2 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 be final at any meeting of the council. Such interpretation will have regard to the purposes of this constitution contained in Article 1.

**11.3 Publication**

- (a) The monitoring officer will make a copy of this constitution available to each member of the authority as soon as practicable following its formal adoption by the council or upon delivery to him or her of that individual's declaration of acceptance of office on the member first being elected to the council, whichever is the later event.
- (b) The monitoring officer will ensure that the constitution is available for inspection at council officers, libraries and other appropriate locations, and that copies can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The monitoring officer will ensure that the summary of the constitution is made widely available within the area and is updated as necessary.

**SUMMARY OF EXECUTIVE ARRANGEMENTS**

The following parts of this constitution constitute the executive arrangements:

1. Article 5.1 (the leader of the council and cabinet) and those parts of standing orders which apply to the executive;
2. Article 5.2 (overview and scrutiny committees) and those parts of standing orders which apply to overview and scrutiny;
3. Articles 5.5 and 6 (other committees and joint arrangements);
4. Article 8 (decision making); and
5. Part 2 (responsibility for council functions).