

**Wiltshire Council  
Constitution  
Part 2  
Articles of the Constitution**

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# PART 2

## ARTICLES OF THE CONSTITUTION

### Article 1 - Main provisions of the Constitution

#### Powers of the Council

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

#### The Constitution

2. This Constitution, and all its Parts and Protocols, is the Constitution of the Wiltshire Council.

#### Purpose of the Constitution

3. The purpose of the Constitution is to:
  - 3.1 enable decisions to be taken efficiently and effectively;
  - 3.2 support the active involvement of members of the public in the process of local authority decision making, and protect the rights of the public including as set out at Article 3;
  - 3.3 enable the Council to provide clear leadership to the community of Wiltshire in partnership with residents of the local authority area, businesses and other organisations;
  - 3.4 help Members represent their constituents more effectively;
  - 3.5 create a powerful and effective means of holding decision-makers to public account;
  - 3.6 ensure that no-one will review or scrutinise a decision in which they were directly involved;
  - 3.7 ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
  - 3.8 provide a means of improving the delivery of services to the community.
4. The Council's goals are to:
  - deliver high quality, low cost, customer-focused services;
  - ensure local, open, honest decision making and;
  - work together to support Wiltshire's communities.
5. The Council will adopt a Business Plan setting out any specific missions or themes.

#### Interpretation and review of the Constitution

6. Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.
7. The Council will monitor and evaluate the operation of the Constitution and amend it to reflect current legislation and best practice.

## **Article 2 - Members of the Council**

### **Composition and eligibility**

1. The Council will comprise 98 Councillors, known as Members, with each Member representing one electoral division.
2. Only those over 18 years of age who are either registered voters of the Wiltshire Council area, or who live, work or occupy land there will be eligible to hold the office of Member.

### **Election and terms of office of members**

3. Members were first elected to the Council on 4 June 2009 and regular election of members will be held on the first Thursday in May every four years thereafter unless this is varied by order of the appropriate Secretary of State.
4. The terms of office of Members will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.
5. With the exception that the Chairman of the Council continues in office until their successor is appointed at the annual meeting of Council.

### **Roles and functions of all Members**

6. All Members elected to Wiltshire Council will be guided by the Role and Responsibilities of Members, which forms Part 11 of this Constitution.
7. The key roles and responsibilities of Members are to:
  - 7.1 champion their division;
  - 7.2 be a community leader;
  - 7.3 keep in touch with constituents and help resolve their problems;
  - 7.4 attend meetings and contribute to the decision-making process;
  - 7.5 be a 'corporate parent' for looked-after children;
  - 7.6 represent the Council on Outside Bodies;
  - 7.7 undertake training required for any particular function

### **Rights and duties**

8. Members will have a right 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.
9. Members will not make public, information which is exempt or confidential without the consent of the Council or divulge information given in confidence to anyone other than a Member or officer entitled to know it.
10. For these purposes, "confidential information" and "exempt information" are defined in the access to information rules in Part 5 of this Constitution. The Members Code of Conduct provides further guidance on disclosure of such information at Part 12 of the Constitution.

## **Conduct**

11. Members will at all times adhere to
  - 11.1 the Code of Conduct as set out in Part 12 of this Constitution;
  - 11.2 other codes of practice as approved from time to time by the Council;
  - 11.3 Protocol 1 of this Constitution on Member/Officer relations.

## **Allowances**

12. Members and Co-opted Members will be entitled to receive allowances in accordance with the Members' allowances scheme set out in Part 13 of this Constitution.

## **Article 3 - Members of the public and the Council**

### **Rights of members of the public**

1. Members of the public have rights as set out in this article. They have further rights relating to access to information details of which appear in the access to information rules in Part 5 of this Constitution.

### Voting and petitions

2. Residents on the electoral roll for the area have the right to vote and sign a petition to request a referendum on whether Wiltshire Council should adopt a different form of governance, such as changing from the Leader and Cabinet model currently adopted.
3. The public can petition the Council to take specified actions. Such petitions will be dealt with under the Council's Petitions Scheme, which is set out in Part 4A of the Constitution.

### Information

4. Members of the public have the right:
  - 4.1 To contact the Council by telephone, post, email, fax or in person. An acknowledgement will be sent within 2 working days, and a full response to all written correspondence within 15 working days from the day correspondence is received. Where legislation dictates otherwise, for example Freedom of Information requests, different timescales may apply. If it is not possible to provide a response by the timescales an explanation will be given as to the reason for the delay, what action is being taken, and when a response will be sent;
  - 4.2 To contact their local Member about any matters of concern to them;
  - 4.3 To view the register of Members' interests;
  - 4.4 To obtain a copy of the Constitution on payment of a fee or access it online or by request from the library service;
  - 4.5 To attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed;
  - 4.6 To attend meetings of the Cabinet when key decisions are being considered except those parts where confidential or exempt information is likely to be disclosed;

- 4.7 To find out from the forward plan what key decisions will be taken by the Cabinet and when;
- 4.8 To see reports and background papers, and any records of decisions made by the Council and the Cabinet, except where a document contains confidential and/or exempt information;
- 4.9 To inspect the Council's accounts and make their views known to the external auditor.

### Participation

5. Members of the public have the right to participate in the Council's meetings as set out in at Part 4 of this Constitution (Council rules of procedure).

### Complaints

6. Members of the public have the right to complain to:
  - 6.1 The Council under its complaints procedure, as set out in Protocol 6 of this Constitution, for complaints regarding council services;
  - 6.2 The Local Government and Social Care Ombudsman for complaints covered by the ombudsman scheme;
  - 6.3 The Monitoring Officer about alleged breaches of a Code of Conduct by elected Members and Co-opted Members of Wiltshire Council, and Members of City, Town and Parish Councils within its area, as set out in Protocol 11 of this Constitution.

### **Responsibilities of members of the public**

7. Members of the public must not be violent, abusive or threatening to Members or officers and must not wilfully harm property owned by the Council, Members or officers.

## **Article 4 - The Full Council**

### **Meanings**

#### Policy Framework

1. The Policy Framework means the plans and strategies set out in Part 3B of this Constitution.

#### Budget

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

### **Functions of the Full Council**

3. Only the Full Council will exercise the following functions:
  - 3.1 adopting and changing the Constitution;
  - 3.2 approving, adopting or amending the policy framework and the budget;



- 3.3 subject to the urgency procedure contained in the access to information procedure rules in Part 5 of this Constitution, making decisions about any matter in the discharge of a Cabinet function which is covered by the policy framework or the budget, where such a decision would fall outside the policy framework or budget;
- 3.4 appointing and removing the leader of the Council;
- 3.5 agreeing or amending the terms of reference for committees of the Council, other than joint committees, deciding on their composition, and making appointments to them;
- 3.6 appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council to an officer;
- 3.7 adopting a Members' allowances scheme;
- 3.8 changing the name of the Wiltshire Council area
- 3.9 confirming the designation of the Head of Paid Service and other statutory officer posts;
- 3.10 making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills
- 3.11 agreeing the cycle of Full Council meetings;
- 3.12 all local choice functions set out in Part 3B of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet;
- 3.13 all other matters which, by law, must be reserved to Council.

### **Council meetings**

- 4. There are three types of Council meeting:
  - 4.1 the annual meeting;
  - 4.2 ordinary meetings;
  - 4.3 extraordinary meetings;
- 5. They will be conducted in accordance with the procedure rules set out in Part 4 of this Constitution.

### **Responsibility for functions**

- 6. The Council will maintain the tables in Part 3B of this Constitution, setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.
- 7. Details of the Council's committee structure are set out at Part 2 Schedule 1.

## **Article 5 - Chairing the Council**

### **Role and function of the Chairman**

- 1. The Chairman will be elected by the Council annually.
- 2. The Chairman of the Council, and in their absence, the Vice-Chairman, will have the following roles and functions:
  - 2.1 To uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary on advice from the Chief Executive or Monitoring Officer;

- 2.2 To preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of members of the Council and the interests of the community;
- 2.3 To ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not Members of the Cabinet are able to hold the Cabinet to account;
- 2.4 To promote public involvement in the Council's activities;
- 2.5 To attend, or nominate some other non-Cabinet member to attend, such civic functions as they determine appropriate, taking account of the essentially ceremonial character of the office, and acknowledging that representation on matters of a political nature is more appropriately handled by the Leader of the Council or another member of the Cabinet;
- 2.6 To agree matters of special urgency to the extent permitted by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended.
- 2.7 To be consulted on the order of items on council agendas.

## **Article 6 - Overview and Scrutiny Committees**

### **Overview and Scrutiny**

- 1. There are Overview and Scrutiny committees which support the work of the Cabinet and the Council as a whole.
- 2. They may review matters of local concern. Reviews may lead to reports and recommendations which advise the Cabinet and the Council on policies, budget and service delivery, or other relevant matters.
- 3. The Overview and Scrutiny committees also monitor the decisions of the Cabinet. They can 'call-in' a decision which has been made by the Cabinet but not yet implemented. This enables them to consider whether the decision has been taken in accordance with the principles of decision making in this constitution. They may recommend that the Cabinet reconsider the decision. They may also be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

### **Appointment**

- 4. The Council will annually constitute and appoint an Overview and Scrutiny Management Committee and any other Select Committees in accordance with the agreed structure at schedule 1, each comprising at least seven Members, to discharge the functions conferred by the Local Government Act 2000, as amended, and associated regulations.

### **Terms of reference**

- 5. The Overview and Scrutiny Management Committee will be responsible for:
  - 5.1 Overall management of the overview and scrutiny function in line with this article and the Overview and Scrutiny Procedure Rules set out in Part 8 of the Constitution, including call-in of Executive decisions and Member requests for reviews;
  - 5.2 Co-ordination of the overall Overview and Scrutiny work programme, aligned to the Council's priorities;

- 5.3 Leading the working relationship with the Cabinet on the basis of agreed core values;
  - 5.4 Establishing any sub-committees, endorsing the formation of task groups, rapid scrutiny exercises, appointing representatives to project boards and delegating responsibility as appropriate;
  - 5.5 Assigning dedicated overview and scrutiny resources (officer team and budget);
  - 5.6 Overview, policy development and scrutiny of policy framework and other corporate and organisational matters;
  - 5.7 Overview and Scrutiny engagement on budget setting, budget monitoring and the Medium Term Financial Strategy (MTFS);
  - 5.8 Overview, policy development and scrutiny of the Council's Business Plan;
  - 5.9 Preparing an annual report and undertaking periodic performance monitoring;
  - 5.10 developing appropriate overview and scrutiny operational protocols.
6. The Management Committee has the power of direction over the Select Committees. Its membership should where possible include the Chairman of each of the standing Select Committees.
7. The Select Committees will deliver that part of the overall work programme relevant to their service areas under the direction of the Management Committee. They will report to the Management Committee on its work, seek approval for establishment of any Task Groups or rapid scrutiny exercises, and make recommendations as they consider necessary or appropriate.
8. The Management Committee and Select Committees will together:
- 8.1 Perform all overview and scrutiny functions on behalf of the Council;
  - 8.2 Review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
  - 8.3 Make reports and recommendations as appropriate to the Full Council and the Cabinet or relevant Cabinet Member and any relevant partner in connection with the discharge of any functions;
  - 8.4 Foster and encourage an inclusive, structured, non-partisan and non-adversarial approach to overview and scrutiny which is reliant on evidence rather than anecdote.
9. The Management Committee will also work with the Audit and Governance Committee to refer matters of governance and/or the control environment for further review. Likewise, the Audit and Governance Committee can refer matters arising from its remit that have a specific impact or risk to the Council's policy or operation to the Management Committee to consider the need for review.
10. In addition to the above, the committee responsible for health scrutiny will:
- 10.1 Review and scrutinise any matter relating to the planning, provision and operation of health services in Wiltshire, including any significant change to service provision and those jointly commissioned or delivered by the Council;
  - 10.2 Require the attendance of an officer of a local NHS body to answer questions and provide explanations about the planning, provision and operation of health services in Wiltshire;

- 10.3 Require a local NHS body to provide information about the planning, provision and operation of health services in Wiltshire, subject to the exemptions outlined in the Health and Social Care Act 2001;
- 10.4 Participate in cross-boundary overview and scrutiny of health services with other local authorities, including the establishment of joint committees, or the delegation of functions to another local authority;
- 10.5 Maintain an overview of the Council's responsibilities and role in relation to health and wellbeing.

## **Finance**

11. The Overview and Scrutiny Management Committee will exercise overall responsibility for the finances made available to the overview and scrutiny function

## **Proceedings of Overview and Scrutiny Committees**

12. The Overview and Scrutiny Management Committee and Select Committees will conduct their proceedings in accordance with the overview and scrutiny procedure rules set out in Part 8 of this Constitution.

## **Article 7 - The Executive/Cabinet**

### **Role**

1. The Executive of the Council shall be known as 'The Cabinet'.
2. The Cabinet will carry out all of the Council's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

### **Form and composition**

3. The Cabinet will consist of the Leader of the Council together with at least two, but not more than nine members of the Council appointed to the Cabinet by the Leader
4. The Leader of the Council will report all Cabinet appointments or changes, including alteration of portfolio responsibilities, to the first available meeting of the Council.

## **Leader and Deputy Leader of the Council**

5. The Council will operate a Leader and Cabinet Executive in accordance with the Localism Act 2011 with the following Executive arrangements:
  - 5.1 Appointment by the Council of an Executive Leader of the Council, hereafter to be referred to as the Leader, for a term of four years, commencing with the day of election as Leader;
  - 5.2 The Leader to determine the number of Members who may be appointed to the Cabinet, subject to a minimum of two and a maximum of nine (excluding the Leader);
  - 5.3 The Leader to appoint one of the members of the Cabinet to be their deputy;
  - 5.4 The Deputy Executive Leader, hereafter to be referred to as the Deputy Leader, to hold office until the end of the term of office of the Leader, unless the Deputy Leader resigns as deputy, or ceases to be a member of the Council;

- 5.5 The Leader to have power to remove the Deputy Leader from office if they think fit;
  - 5.6 The Leader to appoint a Deputy Leader when a vacancy occurs in that office;
  - 5.7 The Deputy Leader to act in place of Leader if for any reason the Leader is unable to act, or the office of Leader is vacant;
  - 5.8 The Cabinet to act, or arrange for a member of the Cabinet to act, if for any reason both the Leader and the Deputy Leader are unable to act, or their respective offices are vacant;
  - 5.9 In the event of the office of Leader of the Council becoming vacant, the Deputy Leader, if eligible, shall assume the office of Leader until the vacancy is filled by the Council for the remainder of the council term.
6. The Leader of the Council will hold office until:
    - 6.1 They resign from the office; or
    - 6.2 They are no longer a Member; or
    - 6.3 They are removed from office by resolution of the Council.

### **Other Cabinet Members, Cabinet Committees, and Portfolio Holders**

7. Other Cabinet Members shall hold office until:
  - 7.1 they resign from office; or
  - 7.2 they are no longer Members; or
  - 7.3 they are removed from office by the Leader, who must give written notice of any removal to the Chief Executive. The removal will take effect two working days after receipt of the notice by the Chief Executive.
8. As set out in Part 3C Cabinet Committees may be established such as the Cabinet Shareholder Committee, in relation to Council owned companies.
9. The Leader may also appoint other Members as 'Portfolio Holders' to assist Cabinet Members with the oversight, policy development and management of their areas of responsibilities.
10. Portfolio Holders are not Members of the Cabinet, and cannot exercise or be delegated any executive functions.

### **Proceedings of the Cabinet**

11. Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 7 of this Constitution.
12. Meetings of the Cabinet will be chaired by the Leader. No substitutes are permitted on Cabinet.

### **Responsibility for functions**

13. The Leader will maintain a list in Parts 3C and 3D of this Constitution setting out which individual members of the Cabinet, committees of the Cabinet, officers, or joint arrangements, are responsible for the exercise of particular Executive functions.

14. Any changes in these functions are to be reported by the Leader to the first available Council meeting.

### **Article 8 - Regulatory functions and other committees**

1. The Council will appoint the committees set out in Part 3B of this Constitution (responsibility for Council functions) to discharge the functions detailed under each committee.

### **Article 9 - The Standards Committee**

#### **Standards Committee**

1. The Council will establish a Standards Committee and appoint elected members to it annually.
2. The Standards Committee will have the roles and functions set out in Part 3B of this Constitution.

### **Article 10 - Area Committees**

3. For the purposes of this Constitution Area Boards as appointed by the Council under section 102 of the Local Government Act 1972 are constituted as area committees within the meaning of Section 18 of the Local Government Act 2000 and regulations made under that section for the purpose of discharging functions delegated by the executive

#### **Area Committees - access to information**

4. Any Area committees, such as Area Boards, will comply with the access to information procedure rules in Part 5 of this Constitution.
5. Agenda and notices for area committee meetings will clearly state which items on the agenda relate to the functions of the Cabinet and which do not relate to Cabinet functions.

#### **Cabinet Members on Area Committees**

6. A Member of the Cabinet may serve on an Area Committee if otherwise eligible to do so as a Member.

#### **Area Boards**

7. The Council will establish 18 Area Boards to promote the development of stronger and more resilient communities across Wiltshire.

#### **Role and function**

8. The purpose of Area Boards is to promote the development of stronger and more resilient communities across Wiltshire's community areas.
9. Area Boards will have the role, procedure, and functions set out in Part 3B of this Constitution.

## **Composition**

10. The Area Boards will be constituted as area committees to enable them to exercise local, efficient, transparent and accountable decision making in accordance with arrangements delegated by the Leader
11. Each Area Board will comprise membership as set out in Part 3B of the Constitution.

## **Decision-making**

12. Only the elected unitary Members on the Area Board may vote on matters involving the discharge of Executive functions within the scope of the delegation to Area Boards. However, Area Boards will where appropriate seek the views of any other participants before the final decision is made by the unitary Members.

## **Procedure Rule and Guidance**

13. Area Boards will follow such procedures rules and guidance as issued from time to time by the Leader.

## **Access to information**

14. Area Boards are subject to the access to information procedure rules in Part 5 of this Constitution.

## **Article 11 - Joint arrangements**

### **Arrangements to promote wellbeing**

1. The Leader/Cabinet, in order to promote the economic, social or environmental wellbeing of Wiltshire, may:
  - 1.1 enter into arrangements or agreements with any person or body;
  - 1.2 co-operate with, or facilitate, or co-ordinate the activities of any person or body;
  - 1.3 exercise on behalf of that person or body any functions of that person or body.

### **Joint arrangements**

2. The Council may establish joint arrangements with one or more local authorities and to exercise functions which are not Cabinet functions in any of the participating authorities, or to advise the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities, such as the Police and Crime Panel or Wiltshire Pension Fund Committee.
3. The Leader/Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Cabinet functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
4. Except as set out below, the Leader / Cabinet may appoint only Cabinet Members to such a joint Committee and those members need not reflect the political composition of the local authority as a whole.

5. The Leader/Cabinet may appoint non-Cabinet members to a joint committee in the following circumstances:
  - 5.1 The joint committee has functions for only part of Wiltshire, and that area is smaller than two-fifths of Wiltshire by area or population. In such cases, the Leader/Cabinet may appoint to the joint committee any Member who is a Member for an electoral division which is wholly or partly contained within the area;
  - 5.2 The joint committee relates to functions of the Cabinet of the Council. In such cases, the Cabinet of the Council may appoint to the joint committee any Member who is a Member for an electoral division which is wholly or partly contained within the area.
6. In both of these cases the political balance requirements do not apply to such appointments.
7. Details of any joint arrangements including any delegations to joint committees will be found or summarised in the Council's scheme of delegations in Part 3 of this Constitution.

#### **Access to information**

8. The access to information procedure rules in Part 5 of this Constitution apply to any joint committee.
9. If all the members of a joint committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.
10. If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

#### **Delegation to and from other local authorities**

11. The Council may delegate non-Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances (Section 101 of the Local Government Act 1972 The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012).
12. The Leader/Cabinet may delegate Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances.
13. The decision whether or not to accept such a delegation from another local authority shall be referred to a meeting of Council for approval.

#### **Contracting out**

14. The Cabinet may contract out to another body or organisations Cabinet functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994 or under contracting arrangements where the contractor acts as the Council's agent under usual



contracting principles, provided there is no delegation of the Council’s discretionary decision making.

## Article 12 - Officers

### Management structure

#### General

1. The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.

#### Senior Leadership Structure

2. The Head of Paid Service will determine and publicise a description of the Senior Leadership Structure of the Council.

#### Chief Executive

3. The Council will engage a Chief Executive who will fulfil the statutory role of Head of Paid Service for the purposes of Section 4(1) of the Local Government and Housing Act 1989 and whose responsibilities shall include:
  - 3.1 Overall responsibility for running the Council within the policies currently adopted by the Council and for managing the Council to achieve its aims;
  - 3.2 Authority over all other employees of the Council subject to the officer employment procedure rules as set out in Part 14 of the Constitution;
  - 3.3 Being the Proper Officer for all statutory purposes unless otherwise determined by him/her except as otherwise provided in this Constitution.

#### Statutory posts

4. The Council will designate the following statutory posts as shown:

Designation	Legal reference	Post
Head of Paid Service	Local Government and Housing Act 1989, section 4	Chief Executive
Monitoring Officer	Local Government and Housing Act 1989, section 5	Director - Legal and Governance
Chief Finance Officer	Local Government Act 1972, section 151	Corporate Director, Resources / Deputy Chief Executive
Director of Children’s Services	Children Act 2004, section 18	Corporate Director, People
Director of Public Health	National Health Service Act 2006, section 73A (1)	Director of Public Health

Director of Adult Social Services	Local Authority Social Services Act 1970, section 6 (A1)	Director - Adult Social Care
Returning Officer/Counting Officer, and Electoral Registration Officer	Representation of the People Act 1983, section 8 and section 35	Chief Executive
Deputy Electoral Registration Officers	Section 52(2) Elections Act 2022	Director - Legal and Governance, Electoral Services Specialist Manager, Head of Democracy, Governance, and Customer Services
Designated Scrutiny Officer	Local Government Act 2000, section 9FB	Democracy and Complaints Manager
Data Protection Officer	Data Protection Act 2018, sections 69-71	Data Protection Lead

5. Such posts will have the functions described in paragraphs 6 – 37 below.

### **Functions of the Head of Paid Service**

#### Discharge of functions by the Council

6. 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.

#### Restrictions on functions

7. The Head of Paid Service may not be the Monitoring Officer, but may hold the post of Chief Finance Officer if a qualified accountant.

### **Functions of the Monitoring Officer**

#### Maintaining the Constitution

8. 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 of the Council, staff and the public.

#### Ensuring lawfulness and fairness of decision making

9. After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council, or to the Cabinet in relation to a Cabinet function, if he or 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.

#### Supporting the Standards Committee

10. The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
11. They will be responsible for all Monitoring Officer functions in respect of parish and town Councils within the area of the authority, and for making arrangements in conjunction with the Standards Committee for the provision of advice and training to members of the Council and members of parish and town Councils on the ethical framework.

#### Conducting investigations

12. The Monitoring Officer will conduct investigations into matters referred under the Council's arrangements for dealing with complaints under the Code of conduct.

#### Advising whether Cabinet decisions are within the Budget and Policy Framework

13. The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.

#### Providing advice

14. The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Members of the Council.

#### Complaints

15. The Monitoring Officer will act as corporate complaints officer and generally advise the Chief Officers of the Council in this regard.

#### Restrictions on posts

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

### **Functions of the Chief Finance Officer/Section 151 Officer**

#### Ensuring lawfulness and financial prudence of decision making

17. After consulting the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council or to the Cabinet in relation to a Cabinet function and the Council's external auditor if he or 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.

#### Administration of financial affairs

18. The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council including:
  - 18.1 The proper administration of the authority's financial affairs, including the Wiltshire Pension Fund and trust funds vested in the Council;
  - 18.2 Setting and monitoring compliance with financial management standards;
  - 18.3 Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;
  - 18.4 Providing financial information;

- 18.5 Preparing the revenue budget and capital programme;
  - 18.6 The maintenance of an adequate and effective internal audit
  - 18.7 Treasury management.
19. Regulation 5 of the Audit and Accounts (England) Regulations 2011 requires the Chief Finance Officer to determine the accounting records, and accounting control systems and to ensure that the accounting control systems are observed and that accounting records are kept up to date.
20. Section 114 of the Local Government Finance Act 1988 requires the Chief Finance Officer to report to the Full Council, the Cabinet and external auditor if the authority or one of its officers:
- 20.1 Has made, or is about to make, a decision which involves incurring unlawful expenditure;
  - 20.2 Has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the authority;
  - 20.3 Is about to make an unlawful entry in the authority's accounts.

#### Contributing to corporate management

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

#### Providing advice

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

#### Give financial information

23. The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### Financial Regulations and Financial Procedure Rules

24. The Chief Finance Officer shall be responsible for the Financial Regulations and Procedure Rules as set out at Part 9 of this Constitution

#### **Functions of the Director of Children's Services**

25. To:
- 25.1 Participate in the corporate management of the Council;
  - 25.2 Direct the children and education teams in the provision of educational services and childcare services in support of the Council's corporate goals;
  - 25.3 Ensure the Council meets its statutory obligations under the Children Acts 1989 and 2004 and Section 75 of the National Health Service Act 2006 and as Local Education Authority;
  - 25.4 Acts as the Council's statutory Director of Children's Services under section 18 of the Children Act 2004.

#### **Functions of the Director of Public Health**

26. To act as the Council's statutory Director of Public Health under section 73A of the National Health Service Act 2006.

### **Functions of the Director of Adult Social Services**

27. To:
- 27.1 Participate in the corporate management of the Council;
  - 27.2 Direct the adult social care teams in the provision of adult care services, libraries, arts and heritage, community planning and governance and community safety services in support of the Council's corporate goals and manage its partnership arrangements with external bodies, particularly the voluntary sector and health service;
  - 27.3 Ensure that the Council meets its statutory obligations under adult social services and other legislation;
  - 27.4 Act as the Council's statutory director of adult social services under section 6 of the Local Authority Social Services Act 1970.

### **Functions of Electoral Registration Officer and Deputy Registration Officers**

28. To:
- 28.1 Maintain an accurate and complete electoral register for the Wiltshire Council authority area;
  - 28.2 Be a data controller specifically for electoral data;;
  - 28.3 Structure the electoral register to implement and update boundary changes
  - 28.4 Carry out statutory duties in accordance with electoral legislation.

### **Functions of Returning Officer**

29. To:
- 29.1 Organise and administer UK Parliamentary constituency elections, Police and Crime Commissioner Elections, Wiltshire Council Unitary Elections, City Town and Parish Council elections, Neighbourhood planning referenda, parish polls and any other elections or referenda as required within the Wiltshire Council authority area;
  - 29.2 Be a data controller specifically for electoral data;
  - 29.3 Carry out statutory duties in accordance with electoral legislation.

### **Functions of the Designated Scrutiny Officer**

30. To promote the role of the authority's Overview and Scrutiny Committees.
31. To provide support to the authority's Overview and Scrutiny Committees.
32. To provide support and guidance to:
- 32.1 Members of the authority;
  - 32.2 Members of the Executive of the authority, and;
  - 32.3 Officers of the authority.

in relation to the functions of the authority's Overview and Scrutiny Committees.

### **Functions of the Data Protection Officer (DPO)**

33. As follows:

- 33.1 Informing the Council, its employees and any data processors it engages, of their obligations in respect of data protection legislation;
- 33.2 Providing advice on the completion and monitoring of requirements to conduct data protection impact assessments;
- 33.3 Co-Operating with and acting as the contact point for the Information Commissioner;
- 33.4 Monitoring compliance with policies in relation to the protection of personal data;
- 33.5 Monitoring compliance with the data protection legislation;
- 33.6 Reporting any significant issues to the council's corporate leadership team.

### **Duty to provide sufficient resources to the Head of Paid Service, Monitoring Officer and Chief Finance Officer**

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

### **Conduct**

35. Officers will comply with the Officers' Code of Conduct set out in Part 15 of this Constitution and the Protocol on Member-Officer Relations in Protocol 1 of this Constitution.

### **Employment**

36. The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in Part 14 of this Constitution.

### **Politically Restricted Posts**

37. The council's position regarding roles which are politically restricted shall be set out in the [Politically Restricted Posts Policy and Procedure](#).

## **Article 13 - Decision Making**

### **Responsibility for decision making**

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

### **Principles of decision making**

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

- 2.1 To produce action that is proportionate to the desired outcome;
- 2.2 To ensure open, fair and honest administration;
- 2.3 To be clear over desired outcomes and aims;
- 2.4 To record the options considered and discarded;
- 2.5 To state the reasons for the action;
- 2.6 To consult interested parties where appropriate and practicable;
- 2.7 To consult appropriate officers and to seek their professional advice;
- 2.8 To show due respect for human rights, and to provide equality of opportunity;
- 2.9 To obtain best value and operate efficiently, effectively and economically;
- 2.10 To serve Wiltshire communities and to work in partnership with other agencies having the same aim;
- 2.11 To promote the economic, social, and environmental well-being of the county;
- 2.12 To determine issues at the lowest level commensurate with their importance;
- 2.13 To keep and sustain what is useful in the traditions of the authority and to reject any practices or services retained purely out of sentiment.

## **Decisions**

### **Decisions reserved to Full Council**

- 3. Decisions relating to the functions set out in Article 4 will be made by the Full Council and not delegated without a decision of Full Council to do so.

### **Decision making by the Full Council**

- 4. The Council meeting will follow the Council procedure rules set out in Part 4 of this Constitution when considering any matter.

### **Decision making by the Cabinet**

- 5. The Cabinet will follow the Cabinet Procedure Rules set out in Part 7 of this Constitution when considering any matter.

### **Key decisions**

- 6. When major decisions ("key decisions") are to be discussed or made, they are published in the Cabinet's forward work plan, in so far as they can be anticipated.
- 7. Wiltshire Council defines a key decision as:
  - 7.1 Any decision which would result in the closure of an amenity or total withdrawal of a service;
  - 7.2 any restriction of service greater than 5 per cent measured by reference to current expenditure or hours of availability to the public;
  - 7.3 any action incurring expenditure or producing savings greater than 20 per cent of budget service areas against which the budget is determined by Full Council;
  - 7.4 any decision in accordance with the Council's Financial Regulations (Part 9), involving financial expenditure of £500,000 or above, with the exception of operational expenditure by the Chief Executive identified within the approved budget and policy framework;
  - 7.5 any proposal to change the policy framework;

- 7.6 any proposal which would have a significant effect on communities living or working in an area comprising two or more electoral divisions;
- 7.7 any contract (or programme) which:
  - 7.7.1 exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;
  - 7.7.2 involves the transfer of 50 or more employees in or out of the council; or
  - 7.7.3 relates to a matter which is commercially, politically or strategically sensitive.
- 8. If key decisions are to be discussed with council officers at a meeting of the Cabinet, the meeting will be open for the public to attend except where matters of a confidential or exempt nature are to be discussed.
- 9. The Cabinet has to make decisions which are in line with the Council's budget and policy framework. If it considers that a decision is required which is outside the budget or policy framework, it must refer the matter to the whole council for a decision.

### **Decision making by Overview and Scrutiny Committees**

- 10. Overview and Scrutiny Committees will follow the Overview and Scrutiny Procedures Rules set out in Part 8 of this Constitution when considering any matter.

### **Decision making by other committees and sub-committees established by the Council**

- 11. Other Council committees and sub-committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

### **Decision making by Council bodies acting as tribunals**

- 12. The Council, a Member of 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, 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**

### **Financial management**

- 1. The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules and Financial Regulations set out in Part 9 of this Constitution.

### **Contracts**

- 2. Every contract made by the Council will comply with the contract regulations set out in Part 10 of this Constitution.

### **Legal proceedings**



3. The Solicitor to the Council, or other person authorised by him/her, is authorised to institute, defend, settle 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 considers that such action is necessary to protect the Council's interests.

### **Authentication of documents**

4. Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Solicitor to the Council, or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person

### **Common Seal of the Council**

5. The Common Seal of the Council will be kept in a safe place in the custody of the Solicitor to the Council.
6. 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.
7. The Common Seal will be affixed to those documents which, in the opinion of the Solicitor to the Council, should be sealed.
8. The affixing of the Common Seal will be attested by the Solicitor to the Council or some other person authorised by him/her.

## **Article 15 - Review and revision of the Constitution**

### **Duty to monitor and review the Constitution**

1. The Standards Committee on the advice of 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.

### **Procedure for monitoring and review of the Constitution by the Monitoring Officer**

2. A key role for the Monitoring Officer is to monitor the effectiveness of the Constitution and to make recommendations for ways in which it could be amended in order to better achieve the purposes set out in Article 1, and otherwise ensure it remains up to date.
3. In undertaking this task the Monitoring Officer may:
  - 3.1 Observe any meetings of different parts of the Member and officer structure;
  - 3.2 Undertake an audit trail of a sample of decisions;
  - 3.3 Record and analyse issues raised with them by Members, officers, the public and other relevant stakeholders
  - 3.4 Compare practices in this authority with those in other comparable authorities, or national examples of best practice.

## **Changes to the Constitution**

Part 2

Last Updated 11 January 2024

## Approval

4. Changes to the Constitution will usually be approved by the Full Council after consideration of any proposals by the Standards Committee and the Monitoring Officer.
5. The Monitoring Officer also has the delegated authority to amend the Constitution to:
  - 5.1 Reflect decisions of Full Council;
  - 5.2 Reflect changes in the law;
  - 5.3 To correct errors or clarify ambiguities, where to do so does not alter (but gives further effect to) the Executive arrangements or the principles enshrined in the Constitution.
6. Any changes made by the Monitoring Officer under this delegated authority will be reported to the Standards Committee, or any body established by the Standards Committee for that purpose.

## Change from a Leader and Cabinet form of Executive to alternative arrangements, or vice versa

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

## **Article 16 - Suspension, interpretation and publication of the Constitution**

### **Limit to suspension**

1. The Articles of this Constitution may not be suspended. The rules specified below may be suspended by the Full Council to the extent permitted within those rules and the law.

### **Procedure to suspend**

2. A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Members is present at Full Council. The extent and duration of any suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

### **Rules capable of suspension**

3. The Council's procedure rules, set out within Part 4 of the Constitution, refer to which of the following rules may be suspended.

## **Interpretation**

4. The ruling of the Chairman of the Council as to the interpretation 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.

## **Publication**

5. The Monitoring Officer will make available an electronic copy of this Constitution to every Member of the authority upon delivery to them of that individual's declaration of acceptance of office on the Member's first being elected to the Council.
6. The Monitoring Officer will ensure that copies are available for inspection at Council offices, on the internet, and in other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
7. Access by electronic means shall be sufficient for the purposes of this rule.

## **Article 17 - Description of Executive arrangements**

1. The following parts of this Constitution constitute the Executive arrangements:
  - 1.1 Overview and Scrutiny committees and the Overview and Scrutiny procedure rules (Part 8);
  - 1.2 The Cabinet and the Cabinet procedure rules (Part 7);
  - 1.3 Area Boards when discharging Executive functions;
  - 1.4 Joint executive arrangements – should any be established;
  - 1.5 Decision-making and the access to information procedure rules (Part 5);
  - 1.6 Parts 3C and 3D (responsibility for functions).

# PART 2 SCHEDULE 1 – WILTSHIRE COUNCIL COMMITTEE STRUCTURE

