

## **PART 2 ARTICLES OF THE CONSTITUTION**

### **Article 1 The Constitution**

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

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

#### **1.2 The Constitution**

The Constitution of Devon County Council comprises these Articles and all the appendices incorporated in Parts 3–9.

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

- to set out how the Council will exercise its powers and duties and provide leadership to the community in co-operation with the public, businesses and other organisations;
- to set out how decisions will be taken;
- to ensure that the people responsible for decision making are clearly identifiable and that they explain the reasons for their decisions;
- to establish a means of holding decision makers to public account;
- to ensure that no one will review or scrutinise a decision in which they were directly involved;
- to support the involvement of members of the public in the Council's decision-making processes;
- to help councillors represent their constituents.

#### **1.4 Interpretation and Review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action the Council will always choose the option which it thinks is closest to the purposes stated above. The Council will monitor and evaluate the operation of the Constitution in accordance with Article 15.

### **Article 2 Members of The Council**

#### **2.1 Composition and eligibility**

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

The Council is currently composed of 60 members, otherwise called Councillors. One Councillor will be elected by the voters of the 56 single-member electoral divisions and 2 Councillors by the voters of the 2 two-member electoral divisions, in accordance with a scheme drawn up by the Electoral Commission. The Chief Executive maintains a Register of the names and addresses of all members, of the Committees on which they serve and of the outside bodies to which they have been appointed to represent the Council.

**(b) Eligibility**

Only registered voters of the County of Devon or those living, occupying property or working here are eligible to hold the office of councillor in accordance with the qualifications set out in Section 79 of the Local Government Act 1972.

**2.2 Election and terms of office of councillors**

Unless HM Government prescribes otherwise, the regular election of councillors is held on the first Thursday in May, every four years. The terms of office of councillors start on the fourth day after being elected and finish on the fourth day after the date of the next regular election.

**2.3 Roles and functions of all councillors**

**(a) Main roles:**

All councillors:

- (i) participate in the governance and management of the Council;
- (ii) are, collectively, the ultimate makers of policy and carry out a number of strategic and corporate management functions;
- (iii) contribute to the good governance of the area and encourage community participation and public involvement in decision-making;
- (iv) maintain the highest standards of conduct and ethics;
- (v) represent the interests of their electoral divisions and of individual constituents;
- (vi) respond to constituents' enquiries and representations fairly and impartially; and
- (vii) represent the Council on other bodies.

**(b) Rights and duties:**

- (i) Councillors have rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions in accordance with the law.
- (ii) Councillors must not make public information which is confidential or exempt without the consent of the Council or divulge information given to them in confidence to anyone other than another councillor or officer entitled to receive it.
- (iii) For these purposes, "confidential" and "exempt" information is defined in the Access to Information Procedure Rules in Part 4 of this Constitution.

**2.4 Conduct**

Councillors are expected at all times to observe the Members' Code of Conduct set out in Part 6 of this Constitution and to abide by the Protocol on Member/Officer Relations which is also set out in Part 6.

## 2.5 Allowances

Councillors are entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 7 of this Constitution.

## Article 3 The People of Devon and The Council

### 3.1 People's rights

Those who live and work in Devon have the rights summarised in (a) to (d) below. Their rights to information about and to participate in decision-making are explained in more detail in the Access to Information Procedure Rules in Part 4 of this Constitution:

#### (a) Voting and petitions

Residents on the electoral roll for the area have the right to vote and to sign a petition to request a referendum for an elected mayor form of constitution.

#### (b) Information

The people of Devon have the right to:

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

#### (c) Participation

The people of Devon have the right to ask questions at meetings of the County Council or the Cabinet and to also make representations at meetings of the County Council on any matter relating to the functions of the Council. There is no other general right to speak at meetings although members of the public:

- (i) have the right, where they may be concerned about specific planning applications, to make oral representations at meetings of the Development Management Committee and likewise in respect of Traffic Regulation proposals at Highways and Traffic Orders Committees and proposals for public path orders at the Public Rights of Way Committee, as set out in Part 4 of this Constitution;
- (ii) at any of these meetings may, in addition, make written representations relating to an item on the agenda for that meeting, submit petitions relating to the County Council's functions (raising their concerns, asking for the matter to be discussed by the Council or for a senior officer to attend a meeting) in accordance with the Council's Petition Scheme, as also set out in Part 4 of this Constitution;
- (iii) may also contribute in writing or orally by invitation to specific investigations carried out by Scrutiny Committees or make

representations at a Scrutiny Committee on any substantive matter to be considered at that meeting.

**(d) Webcasting. Recording or Reporting of Meetings and Proceedings**

Proceedings of the Council, the Cabinet and Committees may be recorded for broadcast live on the internet via the 'Democracy Centre' on the County Council's website. Such meetings will broadcast in full excluding any confidential items which may need to be considered in the absence of the press and public. For more information go to: <http://www.devoncc.public-i.tv/core/>

The people of Devon also have the right to record or film all or part of the proceedings of any meeting of the Council, its Cabinet or any Committee unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chair of the meeting.

Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chair so that all those present may be made aware that is happening and have the opportunity to be excluded.

The public also have the right to use Facebook, Twitter or any other forms of social media to report on proceedings at a meeting. An open, publicly available Wi-Fi network is normally available for meetings held in the Committee Suite at County Hall. For information on Wi-Fi availability at other locations please contact the Democratic Services & Scrutiny Secretariat.

**(e) Complaints**

The people of Devon have the right to complain to:

- (i) the councillor who represents the division in which they live or work;
- (ii) the Council under its complaints scheme;
- (iii) the Ombudsman (after having exhausted the Council's own complaints scheme);
- (iv) the Council's Monitoring Officer about an alleged breach of the Council's Code of Conduct for Members.

Details of how to make a complaint in any of the above situations may be found on the Council's website at:

<https://new.devon.gov.uk/haveyoursay/feedback-and-complaints/>  
<https://new.devon.gov.uk/democracy/councillors-nav/making-a-complaint-about-a-devon-county-councillor/>

**3.2 Responsibilities of members of the public**

All councillors and officers are entitled to be treated with courtesy. Members of the public must not be violent, abusive or threatening to councillors or officers and must not wilfully damage Council property.

## **Article 4    The Full Council**

### **4.1        Meanings**

#### **(a)        Policy Framework**

The policy framework means the following plans and strategies (or successor documents):

- The Council's Strategic Plan;
- Minerals and Waste Development Plan documents;
- Local Transport Plan;
- Municipal Waste Management Strategy;
- Pay Policy Statement

#### **(b)        Budget Framework**

The budget is an annual process by which financial resources are allocated to different services and projects, contingency funds are earmarked, the council tax precepts required from each District Council are approved, together with the consequent level of council tax for each of the property valuation bands, and decisions are made relating to the control of the Council's borrowing requirements, the control of its capital expenditure, virement limits, treasury management strategy and capital strategy.

#### **(c)        Rules**

The Policy and Budget Framework Rules in Part 4 of this Constitution set out in more detail how policies are approved and the budget is adopted.

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

Only the Council exercises the following functions:

- (a)        adopting and changing the Constitution;
- (b)        adopting or amending the policy framework;
- (c)        adopting or amending the budget;
- (d)        determining and keeping under review how much money it can afford to borrow;
- (e)        subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter where the Cabinet, and Cabinet Member or another Committee proposes to act in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;

- (f) appointing the Leader of the Council;
- (g) agreeing and/or amending the terms of reference for committees, including any joint committee to be appointed under s20 of the Local Government Act, deciding on their composition and making appointments to them;
- (h) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (i) adopting an allowances scheme under Article 2.6;
- (j) changing the name of the area and conferring the title of Honorary Alderman;
- (k) confirming the appointment of the Head of the Paid Service;
- (l) Appointment of Chief Officers and Heads of Service
- (m) Dismissal of Head of Paid Service, Chief Finance Office, Monitoring Officer, Chief Officers and Heads of Service.
- (n) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (o) all other matters which, by law, must be reserved to Council;
- (p) deciding whether or not to accept any proposed delegation of functions from another local authority.

#### **4.3 Council meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings;

and they are conducted in accordance with the Standing Orders (Council Procedures) set out in Part 4 of this Constitution.

#### **4.4 Responsibility for functions**

The Council will keep up to date Part 3 of this Constitution setting out how responsibilities for the Council's functions are delegated and exercised.

## **Article 5 Chairing The Council**

### **5.1 Role and function of the Chair of the Council**

The Chair of Council and, in his/her absence, the Vice-Chair has the roles and functions described below.

The Chair is elected annually by the Council and has the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution and to interpret the Constitution when necessary;
- (b) 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;
- (c) to call extraordinary meetings of the Council in accordance with Schedule 12 of the Local Government Act 1972;
- (d) 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 Cabinet are able to hold the Cabinet to account;
- (e) to promote public involvement in the Council's activities;
- (f) to be the conscience of the Council; and
- (g) to attend such civic and ceremonial functions as the Council or they consider appropriate.

## **Article 6    The Cabinet**

### **6.1        Role**

The Cabinet will carry out all the Council's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution as set out in Part 3 hereunder.

### **6.2        Form and composition**

The Cabinet will consist of the Leader together with a minimum of 2 and a maximum of 9 councillors whom they appoint.

### **6.3        Leader**

The Leader will be a councillor elected by the Council at the first annual meeting following the date of ordinary elections. The Leader will hold continue to hold office until the date of the next quadrennial elections, unless they:

- (a) resigns from the office or from the Council; or
- (b) is disqualified from office under Section 82 of the Local Government Act 1972;
- (c) are suspended from being a councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (d) is removed from office by resolution of the Council.

### **6.4        Deputy Leader**

The Council may also appoint a Deputy Leader annually to that position from among the other Cabinet members, to hold office on the same basis as the leader in 6.3(a)-(c) above.

### **6.5        Cabinet Members**

Cabinet members shall be appointed annually by the Leader of the Council with Remits assigned by them and shall hold office on the same basis as the Leader in 6.3(a)-(c) above.

**6.6 Cabinet Support Members**

The Leader of the Council may appoint other members to support Cabinet Members in carrying out their Cabinet Remits and assign to them particular elements of those Remits in which to engage. Such members may attend and speak but not vote at meetings of the Cabinet.

**6.7 Member Champions**

The Council may appoint Member Champions annually from among non-Cabinet Members of the Council and assign to them Remits and responsibilities in which to engage.

**6.8 Proceedings of the Cabinet**

Proceedings of the Cabinet take place in accordance with the Cabinet Procedure Rules set out in Part 4 of this Constitution.

**6.9 Responsibility for functions**

The Leader will maintain the scheme of delegation and lists in Part 3 of this Constitution setting out which individual members of the Cabinet and Council, officers or joint arrangements are for the time being responsible for the exercise of particular Cabinet functions.

**Article 7 Scrutiny Committees**

**7.1 Terms of reference**

The Council will appoint the Scrutiny Committees set out in the left hand column of the table below to discharge the functions conferred by section 21 of the Local Government Act 2000 or any regulations made under section 32 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table.

| <b>Committee</b>   | <b>Scope</b>  |
|--|---|
| Corporate, Infrastructure and Regulatory Services Scrutiny Committee | To review the implementation of the Council's existing policy and budget framework and ensure effective scrutiny of the Council's Treasury Management Strategy and policies and consider the scope for new policies for the Council's use and management of its resources and the discharge of its corporate and strategic services and governance arrangements and community safety activity, including emergency planning and the Council's functions in the scrutiny of authorities responsible for crime and disorder strategies.<br><br>To review the implementation of existing policies and to |

|   |  |
|---|--|
|   | <p>consider the scope for new policies with regard to all aspects of the discharge of the Council's 'place shaping and universal population services' functions concerning the environment, economic activity and enterprise, integrated planning and transport and community services, including libraries, arts and cultural heritage of the County, an integrated youth service and post 16 education &amp; skills.</p> <p>To assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity and relate overview and scrutiny to the achievement of the Council's strategic priorities and objectives and of delivering best value in all its activities.</p> <p>To make reports and recommendations as appropriate arising from this area of overview and scrutiny.</p>   |
| <p>Children's Scrutiny Committee</p>              | <p>To review the implementation of existing policies and to consider the scope for new policies for all aspects of the discharge of the Council's functions concerning the provision of personal services for children including social care, safeguarding and special needs services, schools and learning;</p> <p>To assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity.</p> <p>To relate scrutiny to the achievement of the Council's strategic priorities and objectives and of delivering best value in all its activities.</p> <p>To make reports and recommendations as appropriate arising from this area of overview and scrutiny.</p>   |
| <p>Health &amp; Adult Care Scrutiny Committee</p> | <p>To review the implementation of existing policies and to consider the scope for new policies for all aspects of the discharge of the Council's functions concerning the provision of personal services for adults including social care, safeguarding and special needs services and relating to the health and wellbeing of the people of Devon, including the activities of the Health &amp; Wellbeing Board, and the development of commissioning strategies, strategic needs assessments and, generally, to discharge its functions in the scrutiny of any matter relating to the planning, provision and operation of the health service in Devon.</p> <p>To assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity.</p> <p>To relate scrutiny to the achievement of the Council's strategic priorities and to its objectives of promoting sustainable development and of delivering best value in all its activities.</p> <p>To make reports and recommendations as appropriate arising from this scrutiny to the County Council and to the Secretary of State for Health, in accordance with the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.</p> |

## **7.2 General role**

Within their terms of reference Scrutiny Committees will:

- (a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) make reports and/or recommendations to the full Council and/or the Cabinet and/or any other committee in connection with the discharge of any functions;
- (c) consider any matter affecting the area or its inhabitants; and
- (d) exercise the right to call-in for reconsideration decisions made but not yet implemented by the Cabinet and/or other committees.

## **7.3 Specific functions**

### **(a) Policy development and review**

Scrutiny Committees may:

- (i) assist the Council and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues;
- (ii) conduct research within the community and other consultation in the analysis of policy issues and possible options;
- (iii) question members of the Cabinet, committees and officers about their views on issues and proposals affecting the area.

### **(b) Scrutiny**

Scrutiny Committees may:

- (i) review and scrutinise the decisions made by and the performance of the Cabinet, individual Cabinet Members, other committees and officers both in relation to individual decisions and over time;
- (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (iii) question members of the Cabinet and/or committees and chief officers or responsible senior officer(s) 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 Council and/or Cabinet and/or appropriate committee arising from the outcome of the scrutiny process;
- (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to discuss their activities and performance; and

- (vi) question and gather evidence from any person who is willing to respond to an invitation from a Committee to contribute.

#### **7.4 Proceedings of Scrutiny Committees**

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

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

#### **8.1 Regulatory and other committees**

The Council will appoint the committees set out in the list of responsibilities for Council functions in Part 3 of this Constitution to discharge the functions described there.

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

#### **9.1 Standards Committee**

The Council will establish a Standards Committee.

#### **9.2 Composition**

The Standards Committee must be composed of at least three people and may include at least one co-opted member.

#### **9.3 Role and Function**

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members;
- (b) assisting through advice and training councillors and co-opted members to observe the Members' Code of Conduct;
- (c) advising the Council on the revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) considering complaints, in consultation with an Independent Person appointed under the provisions of the Localism 2011, which allege breaches of the Code of Conduct by Members of the Council;

## **Article 10 Area Committees**

### **10.1 Area committees**

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

The Council will consult relevant district, parish and town councils and the chairs of relevant parish meetings when considering whether and how to establish area committees.

### **10.2 Form, composition and function**

- (a) Area committees: The Council will appoint area committees with the membership and terms of reference set out in Part 3 of this Constitution.
- (b) Delegations: The Council and the Cabinet will include details of the delegations to area committees in Part 3 of this Constitution, including the functions delegated (showing which are the responsibility of the Cabinet and which are not) any budget devolved and any limitations on delegation.

### **10.3 Conflicts of interest — membership of Area Committees and Scrutiny Committees**

- (a) Conflict of interest: A member of a Scrutiny Committee which is scrutinising specific decisions or proposals of an area committee on which the member also serves may not speak or vote at that Scrutiny Committee meeting unless a dispensation to do so is given by the Standards Committee.
- (b) General policy reviews: A member of a Scrutiny Committee which is reviewing a policy relating either generally or specifically to the remit of an area committee on which that member also serves must declare his/her interest before the relevant agenda item is reached but need not withdraw.

### **10.4 Area committees — access to information**

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

Agendas for area committee meetings which include items concerning functions of the Cabinet and functions which are not the responsibility of the Cabinet will state clearly which items are which.

### **10.5 Cabinet members on area committees**

A member of the Cabinet may serve on an area committee if otherwise eligible to do so as a councillor.

## **Article 11 Joint Arrangements**

### **11.1 Arrangements to promote well being**

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

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

### **11.2 Joint arrangements**

- (a) The Council may establish joint arrangements with one or more local authorities 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.
- (b) The 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.
- (c) Except as set out below, the Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political composition of the Council as a whole.
- (d) The Cabinet may appoint members to a joint committee from outside the Cabinet in the following circumstances:
  - the joint committee has functions for only part of the area of the authority and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet 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;
  - the joint committee is between a County Council and a single District Council and relates to functions of the Cabinet of the County Council. In such cases, the Cabinet of the County Council may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within that District Council area.
- (e) Details of any joint arrangements including any delegations to joint committees will be found in Parts 3 and 9 of this Constitution.

### **11.3 Access to information**

- (a) The Access to Information Procedure Rules in Part 4 of this Constitution apply.

- (b) If all the members of a joint committee are members of the Cabinet in each of the participating authorities then the Council shall respond to requests for access to information as if the joint committee was its own Cabinet.
- (c) If the joint committee contains members who are not on the Cabinet of any participating authority then the Access to Information Rules in Part VA of the Local Government Act 1972 will apply.

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

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

#### **11.5 Contracting out**

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

## **Article 12 Officers**

### **12.1 Management structure**

- (a) The Council may employ such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) The oversight of the work of these officers is undertaken by a Leadership Group comprising the Chief Executive, the Chief Officers for Children's Services, for Adult Care & Health, for Communities, Public Health, Environment & Prosperity and for Highways, Infrastructure Development & Waste and the County Solicitor (Monitoring Officer), the County Treasurer (s151Officer) and the Head of Organisational Development. More details of these officers' roles can be found in Part 8 of this Constitution.
- (c) The following posts are designated as follows and have the functions described in Articles 12.2, 12.3 and 12.4: the Chief Executive is the Head of the Paid Service and the Officer responsible for RIPA under the Regulation

of Investigatory Powers Act; the Chief Officer for Children's Services is the Council's statutory Director of Children's Services (s18 Children Act 2004); the Chief Officer for Adult Care & Health is the Council's statutory Director of Adult Social Services (s6 Local Authority Social Services Act 1970); the Chief Officer for Communities, Public Health, Environment & Prosperity is the Council's statutory Director of Public Health; the County Solicitor is the Monitoring Officer and Returning Officer and the County Treasurer is the Chief Finance Officer.

- (d) The Head of the Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 8 of this Constitution.

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

- (a) Discharge of functions by the Council

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

- (b) Restrictions on functions

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

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

- (a) The Constitution

The Monitoring Officer maintains 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) Lawfulness and fairness of decision making

After consulting with the Head of the Paid Service and the Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to a Cabinet function, if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise or may give 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) Reports

The Monitoring Officer will decide whether any report on the agenda of the Council, the Cabinet or any other Committee shall be defined as containing confidential or exempt information.

(d) The Standards Committee and Conduct of Investigations

The Monitoring Officer contributes to the promotion and maintenance of high standards of conduct within the Council by supporting the Standards Committee in responding to and investigating complaints about the conduct of members, in conjunction with any Independent person appointed in accordance with s28 of the Localism Act 2011, and officers and make reports or recommendations in respect of them to the Standards Committee.

(e) Proper Officer for access to information

The Monitoring Officer ensures that decisions of the Council and the Cabinet, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

(f) Context of Cabinet decisions

The Monitoring Officer (in consultation with the Chief Finance Officer) advises whether decisions of the Cabinet are in accordance with the policy and budget frameworks.

(g) Advice

The Monitoring Officer provides advice to all members of the Council on the scope of powers and authority to take decisions, the exercise of 'call-in' mechanisms, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.

(h) Restrictions on post

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

## **12.4 Functions of the Chief Finance Officer**

(a) Lawfulness and financial prudence of decision making

After consulting with the Head of the 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 they consider that any proposal, decision or course of action will involve incurring unlawful expenditure or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

(b) Determination of Annual Budget

The Chief Finance Officer will advise the County Council on the robustness of estimates made for the purpose of determining the annual budget, on the

adequacy of the proposed financial reserves and on the appropriate level of affordable borrowing.

(c) Administration of financial affairs

The Chief Finance Officer has responsibility for the administration of the financial affairs of the Council.

(d) Corporate management

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

(e) Advice

The Chief Finance Officer provides advice on the scope of powers and authority to take decisions, 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.

(f) Financial information

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

**12.5 Functions of the Chief Officer for Communities, Public Health, Environment & Prosperity (Director of Public Health)**

(a) As the Director of Public Health, will ensure the Council exercises its public health functions including but not limited to improving and protecting public health across the County and championing health matters throughout the County Council.

(b) As principal adviser on health matters, advise the County Council on all matters relating to public health: health improvement, health protection and healthcare and such other areas as may be prescribed.

(c) As a Statutory Member of the Health and Wellbeing Board, advise and contribute to the development of Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy and the commissioning of services.

**12.6 Functions of the Scrutiny Officer**

(a) Promote the role of the Council's Scrutiny Committees.

(b) Provide support to the Council's Scrutiny Committees and members of those committees.

(c) Provide support and guidance to all members and officers of the Council in relation to the functions of the Council's Scrutiny Committees.

The Scrutiny Officer may not be:

- (d) the Head of the Council's Paid Service;
- (e) the Council's Monitoring Officer, or
- (f) the Council's Chief Finance Officer

#### **12.6 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide 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.

#### **12.7 Conduct**

As well as abidance of policies as part of contractual obligation, Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 6 of this Constitution.

#### **12.8 Employment**

The recruitment, selection and dismissal of officers will comply with the Chief Officer Employment Rules set out in Part 6 of this Constitution.

### **Article 13 Decision Making**

#### **13.1 Responsibility for decision making**

Decisions of the Council can only be made by one of the following:

- (a) the full Council, the Cabinet, a statutory Committee or a Committee established by the Cabinet with the agreement of the Council;
- (b) a member of the Cabinet or other member or officer of the Council exercising powers specifically delegated by the Leader or Cabinet.
- (c) An Officer of the Council exercising powers specifically delegated to them by the Council.

The Council will issue and keep up to date within Part 3 of this Constitution a record of the powers delegated in accordance with (b) above.

#### **13.2 Principles of decision making**

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

- The provisions of this Constitution;
- Legality;
- Financial prudence;

- The best interests of the people of Devon, with emphasis upon their present and future wellbeing, human rights, prosperity and environment.

### **13.3 Types of decision**

- (a) Decisions reserved to full Council (Framework decisions).
- (b) Key decisions.
- (c) Other decisions

### **13.4 Key Decisions**

Key decisions are those which by reason of their strategic, political or financial significance or which will have a significant effect on communities in more than one division are to be made by the full Cabinet. At every meeting the Cabinet will review the Forward Plan of forthcoming business prepared by the Leader and determine which items are to be defined as key decisions and the date of the meeting at which every such decision is to be made, in line with the Cabinet Procedure Rules.

### **13.5 Decision making by the full Council**

Subject to Article 13.9, the Council will follow the Standing Orders set out in Part 4 of this Constitution when considering any matter.

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

Subject to Article 13.9, the Cabinet will follow the Cabinet Procedure Rules set out in Part 4 of this Constitution when considering any matter.

### **13.7 Decision making by Scrutiny Committees**

Scrutiny Committees will follow the Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

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

Subject to Article 13.9, other Council committees and sub-committees will follow those parts of the Standing Orders set out in Part 4 of this Constitution as apply to them.

### **13.9 Fairness of Council decision making**

The Council, the Cabinet, a Cabinet Member, a Committee, a councillor or an officer acting in a quasi-judicial manner or determining/considering the civil rights and obligations or the criminal responsibility of any person will act at all times in accordance with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights and will suspend or depart from Standing Orders when advised by the Monitoring Officer that it is necessary to do so in order to achieve this compliance.

## **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 Code of Business Conduct in Part 5 of this Constitution.

### **14.2 Contracts**

Every contract made by the Council will comply with the relevant section of the Financial Regulations set out in Part 5 of this Constitution.

### **14.3 Legal proceedings**

The County Solicitor is authorised:

- (a) to institute, defend or settle any legal proceedings where such action is necessary to give effect to decisions of the Council or to protect the Council's interests;
- (b) to sign any document relating to a legal action to which the Council is or may become a party.

### **14.4 Affixing the Common Seal of the Council and Signing of Contracts**

The Common Seal of the Council will be kept in secure custody by the County Solicitor. A decision of the Council, the Cabinet or any committee exercising delegated powers will be sufficient authority for sealing any document or signing any contract necessary to give effect to that decision. The County Solicitor is authorised:

- (a) to affix the Common Seal to those documents which in his/her opinion should be sealed;
- (b) to sign any contract or document pursuant to the above;

The signing of any contract or the affixing of the Common Seal will be attested by the County Solicitor or some other person authorised by them in writing.

### **14.5 Authentication of documents**

All contracts entered into on behalf of the Council in the course of the discharge of a Cabinet function or in accordance with the decision of any other Committee shall be made in writing and, if not made under the Seal of the Council, signed by a Chief Officer of the Council.

## **Article 15 Review and Revision of the Constitution**

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

The Council will appoint a Procedures Committee to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

### **15.2 Protocol for monitoring and review of Constitution by Monitoring Officer**

The Monitoring Officer will advise this Committee on the operation of the Constitution and make recommendations for ways in which it should be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

- (a) observe meetings of different parts of the member and officer structure;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and research issues raised by members, officers, the public and other relevant stakeholders; and
- (d) compare the Council's practices with those in other comparable authorities or national examples of best practice.

### **15.3 Changes to the Constitution**

- (a) Changes to the Constitution will only be approved by the full Council after consideration of a proposal by the Procedures Committee except that:
  - (i) the Monitoring Officer shall be responsible without such reference for routine updating necessary to reflect legislative requirements and the decisions of the Council;
  - (ii) the Leader of the Council shall be responsible for updating the scheme of delegation to members and officers set out at Part 3 of the Constitution, relating only to those functions that are the responsibility of the Cabinet, upon the recommendation of the Monitoring Officer in line with Article 6.9
- (b) If a change from a Leader and Cabinet form of executive to alternative arrangements is contemplated, the Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

## **Article 16 Suspension, Interpretation and Publication of the Constitution**

### **16.1 Suspension of the Constitution**

- (a) Limit to suspension.

The Articles of this Constitution may not be suspended. Any rule set out in Part 4 may be suspended by the full Council to the extent permitted within those Rules and the law provided that this suspension is not inconsistent with the Constitution.

- (b) Procedure to suspend.

Subject to Article 13.9, a motion to suspend any rules in Part 4 will not be moved without notice at a meeting of the full Council 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.

## **16.2 Interpretation**

The ruling of the Chair of Council as to the interpretation or application of this Constitution shall not be challenged at any meeting of the Council. Any such ruling will have regard to the purposes of this Constitution contained in Article 1.

## **16.3 Publication**

The Monitoring Officer will:

- (a) give a printed copy of this Constitution to each member of the Council upon delivery to them of that member's declaration of acceptance of office on first election to the Council;
- (b) ensure that copies are available for inspection at council offices (County Hall and Taw View) and can be purchased by members of the local press and the public on payment of a reasonable fee;
- (c) ensure that the summary in Part 1 of the Constitution is made widely available within the county and is updated as necessary.

## **Schedule 1: Description of Executive Arrangements**

The following parts of this Constitution constitute the Council's Executive arrangements:

- Article 7 (Scrutiny Committees) and the Scrutiny Procedure Rules;
- Article 8 (The Cabinet) and the Cabinet Procedure Rules;
- Article 10 (Area Committees) and Part 9;
- Article 11 (Joint arrangements) and Part 9;

- Article 13 (Decision making) and the Access to Information Procedure Rules;
- Part 3 (Responsibility for Functions).