

# The review and redrafting of constitutions: guidance for English authorities

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This is one of three connected publications, all aiming to provide technical advice on the operation and review of critical elements of governance framework for local authorities in England. Between them, the three publications look at:

- Call-in;
- The operation of schemes of delegation to support decision-making;
- The review of Council constitutions

A fourth publication, on the operation of full Council meetings, will be published later in 2023.

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# Introduction

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## What are constitutions for?

Council constitutions provide a framework within which people can understand their own responsibilities, and the responsibilities of others. They allow decision-making, within a democratically elected body, to be consistent, accountable and transparent. They facilitate strong, effective relationships.

Good constitutions provide an anchor for strong organisational and political cultures in which people work well together, and in which decision-making is well-understood by (and visible to) the public.

Constitutions are also rulebooks. They set out much, but not all, of the technical detail of how a council's main decision-making systems operate.

A good constitution is one that is used and understood by councillors and officers alike – and not just governance professionals.

Perhaps more importantly, a good constitution is one whose *core purpose* is understood by those people. It is easy for councils to find themselves in a situation where the minutiae of rules become more important than the objectives those rules are meant to meet. It's important to occasionally step back – to think “why are we doing these things? Has the context for our work changed recently – to the extent that we need to change and strengthen some of these rules and procedures?”

A constitution should be a living document – one that reflect not only evolving practice and law, but also one that is periodically strengthened and refined (as a whole document) to ensure it stays both relevant and consistent.

## What is this guidance for?

The intention of this material is not to set out “best practice” but:

- to introduce key features of modern council constitutions, and the governance framework, to an audience which might not be specialists in those areas;
- to provide officers with responsibility for governance, with general advice to assist them in digging into the technical detail of their constitutional material;
- to ensure that, between members and officers, material exists which gives everyone a common understanding of what good governance is, what its key components are (and what the usual components of a council constitutions are), and to introduce the kinds of technical issues that usually need to be addressed to support it.

None of this material should be interpreted as giving legal advice. Councils' Monitoring Officers are best placed to make accurate judgements about compliance with the law. Nothing in this or other connected material should be seen as challenging that advice, which will reflect the unique context of the council within which it is given.

This material (including this document) covers governance arrangements in England only. In Wales, the Local Government and Elections (Wales) Act 2021 has put in place substantially different arrangements for the organisation and publication of council constitutions, which are covered by separate statutory guidance.

# What needs to be a part of a constitution?

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By law, a council's constitution must contain certain key elements. The detail of these can be found in the [Local Government Act 2000 \(Constitutions\) \(England\) Direction 2000](#), which remains in force. The Direction sets out 26 requirements in full.

## Legislation

The Local Government Act 2000 says, at s9P, that:

- (1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—
  - (a) a copy of the authority's standing orders for the time being,
  - (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
  - (c) such information as the Secretary of State may direct, and
  - (d) such other information (if any) as the authority considers appropriate.
- (2) In the case of a committee system local authority, the authority's constitution must also contain a statement as to whether the authority has resolved to have an overview and scrutiny committee under section 9JA.
- (3) A local authority must ensure that copies of its constitution are available at its principal office for inspection by members of the public at all reasonable hours.
- (4) A local authority must supply a copy of its constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

Further guidance on content was produced by Government in 2000 using powers originally under s38 of the Act.

The guidance goes into granular detail on all components of the constitution set out in the Direction, as well as ancillary material. It usually goes alongside the "Modular Constitution", a separate set of guidance produced at the same time. This document provides a template or blueprint for the structure of the document which is still followed by almost all English councils.

As it is now over two decades old, it should be expected that some content in the guidance and the Modular Constitution is outdated (and some legally inaccurate, particularly those parts which relate to the standards regime abolished in 2011). But this guidance does still provide the only source of comprehensive, "official" information on the topic, and many council constitutions continue to cleave closely to its contents. We comment further on the structure of the constitution in 'Step 5: Determining the structure of the constitution, setting expectations of how process and procedure will work in key areas of the governance framework', below.

We have found that it can be helpful to reflect, before reviewing and updating a constitution, on the principles that underpin its operation. This helps to ensure that the constitution as a whole reflects those principles. This helps to make sure that the document, and the wider governance framework, is internally consistent – and that people understand how the rules and processes in the constitution are used and interpreted. We cover later in the guidance what these principles might be.

## Why does the constitution need regular “fundamental” review?

It might seem that, if a constitution is originally fairly robust, and if it is diligently updated to reflect changes in the law, undertaking a more fundamental review of the document is unnecessary.

However, over time, large numbers of ad hoc changes can lead to a situation where the constitution becomes choppy, inconsistent, difficult to navigate and inaccessible. Minor changes to the law, where overlooked, can result in inaccuracies which can persist for many years. Often these issues do not have enormous impact but a knowledge that certain parts of the constitution may be inaccurate can lead to a chipping away of the document’s authority.

For this reason, it is considered good practice to undertake a more fundamental review once every five years or so. More than “tidying up”, it allows an opportunity to be taken to ensure that the constitution as a whole continues to be fit for purpose. This is particularly the case where there has been a shift in the council’s operating model – for example, if council begins to own and operate companies then constitutional changes will need to account for the added importance of company governance.

The review of a council constitution is not merely a desktop exercise, in which the Monitoring Officer goes through the document to check its accuracy. It is also not an exercise for a small group of members in a working group, churning their way through the document and making suggestions for changing in wording. It has to be more carefully planned and managed. The process and approach must be one with wide ownership and buy-in, as well as being one that centres the role of the Monitoring Officer in ensuring the rigour of the process. The approach towards review, and the ownership of the review process, is covered in the next section ‘Reviewing the constitution’ .

# Reviewing the constitution

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Many council constitutions state that they should be reviewed annually, and that a more comprehensive revision exercise should occur every five years. Practically, this timetable can be difficult to keep to. We know that many council constitutions have not been comprehensively rewritten for well over a decade. The challenge is to find a way to undertake such a review proportionately.

It is not possible to set out “best practice” for the conduct of reviews of council constitutions. Even if council constitutions are similar in structure and content, all councils are different – and governance needs are also different.

However, CfGS’s experience is that an approach which balances the role, insight and expertise of both members and officers works best. The following is an indicative approach, based in part on recent review exercises in which CfGS has been involved.

A prerequisite for any review is to secure legal advice. Work will need to be overseen by a qualified lawyer, or a qualified lawyer will need to be otherwise involved throughout the process. This may be the Monitoring Officer, another lawyer employed by the authority, or a lawyer contracted externally. A qualified lawyer familiar with the statutory requirements relating to constitutions, and associated governance documents, will be able to provide assurance that those documents comply with the law. There is no substitute for the rigour of high-quality legal advice on a document of such fundamental importance.

## Step 1: Affirming ownership of the constitution

The issue of who “owns” the constitution is important to the issue of who makes changes to it, and who has a stake in the conversations that lead to those changes.

The constitution is not “owned” by the Monitoring Officer, or lawyers or other officers with a responsibility for governance. Everyone has an individual and collective responsibility to understand the constitution – as part of the governance framework – and their roles in upholding it by acting in accordance with it and its principles.

This is about not only understanding the “rules” in the constitution and what they say, but the principles behind those rules. Why do we make decisions this way? What alternatives do we have to these ways of working; have we considered those options and if we have discarded some of them, why is this? Members and officers must understand the governance framework and its importance and they need to be bought in.

## The role of councillors in reviewing the constitution

Any major review of the constitution needs to be overseen by members, who need to set the parameters of the exercise. In the normal run of events constitutional changes must be agreed by full Council, but usually regular oversight is undertaken by another body, like the Audit Committee.

In some councils, informal bodies are established to support constitutional reviews. Constitutional Working Groups are quite common bodies to perform this purpose. Whatever approach is taken, meaningful member engagement is a crucial part of any review process. Part of the scoping process for the work (see below) would usually involve agreement on where member input, and signoff, is necessary.

## The role of the Monitoring Officer in reviewing the constitution

Usually, a constitution will empower the Monitoring Officer to make “minor amendments” to the constitution without reference to members. The meaning of these words is moot, and we are aware of councils where members have disputed where certain changes are “minor”.

The MO plays an important role in advising members of the adequacy of the constitution, as part of their formal statutory duties. When a more detailed review is undertaken, the MO will have a critical role in advising members, and leading on the process of redrafting itself. The MO is best placed to understand where and when external legal advice may need to be brought in to assist – redrafting a constitution is a specialist task.

## Step 2: Identifying the drivers for the review

An internal review of governance carried out further to the council’s audit obligations

Councils are legally obliged to prepare a document called an Annual Governance Statement (as set out in the Accounts and Audit (England) Regulations 2015). Further context for the drafting of the AGS is provided in the CIPFA/SOLACE “Delivering Good Governance in Local Government Framework”. The Framework and Regulations make it clear that the preparation of the AGS should be informed by a review, and it is the product of this review which is likely to highlight any need for change and improvement on governance

### The CIPFA/SOLACE framework

The Framework defines the principles that should underpin the governance of each local government organisation. It provides a structure to help individual authorities with their approach to governance.

Whatever form of arrangements are in place, authorities should therefore test their governance structures and partnerships against the principles contained in the Framework by:

- reviewing existing governance arrangements
- developing and maintaining an up-to-date local code of governance, including arrangements for ensuring ongoing effectiveness
- reporting publicly on compliance with their own code on an annual basis and on how they have monitored the effectiveness of their governance arrangements in the year and on planned changes

Audit work might identify a need to strengthen governance around council-owned companies or other commercial activity, or around contracting and procurement – all things that will require changes to procedure rules in the constitution. Occasionally the AGS will flag a need for a more general governance review.

## Internal stresses and pressures

### *Governance change*

The most obvious internal driver for change is a shift from one form of legal governance to another. Moving from the leader-cabinet model to the committee system, for example, will involve a significant revision of key areas of the constitution as a matter of course.



CfGS has commented separately (in the CfGS/LGA document “[Rethinking governance](#)”) of the process to be undertaken when considering options for governance reviews. Constitutional change will come at the end of that process and will need to work to a deadline, as formal change in governance can only happen at the time of Council AGM. This poses an additional challenge, especially where other drivers for change exist.

#### *Changes in political circumstances*

A council’s constitution needs to be robust and flexible enough to respond to political circumstances.

The council may recently have changed political control – or may be under no overall control. Other political circumstances may have placed demand on the governance system. The council may, for example, be highly politically contestable (changing administration regularly) or there may have been another unexpected change in political leadership.

Designing a council’s governance arrangements around its current (or past, or possible future) political circumstances is poor practice. But governance and decision-making do need to be designed to provide the flexibility to deal with a number of scenarios relating to political, and officer, leadership.

There may be challenges associated with a recent high turnover of members – and high turnover of senior officers. On the member side, a loss of long-standing councillors can bring new perspectives and skills from new councillors but can also result in a loss of organisational memory, and familiarity with existing constitutional systems.

On the officer side, the council may have had interims in senior posts for some time, or may for various reasons (financial challenges, the pandemic) simply not have had the headspace to think strategically about governance for some time.

#### *Relationships*

The relationship between members as well as the relationship between members and officers is a critical element of the governance framework.

Where pressures present themselves around decision-making and accountability, they often relate to relationship challenges. The constitution provides a structure within which positive relationships can develop, but the process is not automatic. As such, amendment to the constitution will not itself deliver change, and the scoping of the work (in the next step) needs to take this into account.

Some of these issues are highlighted in CfGS’s “[governance risk and resilience](#)” framework. This framework provides a range of prompts, expressed in the forms of behaviours, relating to good and bad approaches to corporate governance. The presence (or otherwise) of these behaviours could be seen as drivers for the need to review the constitution.

The behaviours can be found here - <https://www.cfgs.org.uk/behaviours-associated-with-the-seven-characteristics/>

Full information on the risk and resilience framework can be found here - <https://www.cfgs.org.uk/governancerisk/>

## External drivers

### *Review and inspection*

The need for a constitutional, or broader governance, review could also be highlighted by an external actor – for example, the Local Government Association, as a result of a corporate peer challenge (CPC). Ofsted and CQC inspections can also highlight the need to address governance.

Importantly, external auditors can also play a role in identifying shortcomings and weaknesses in a council's governance framework as part of their duties.

External drivers such as this can prompt defensiveness. Councils can take forward reviews of the constitution, and of governance, in a perfunctory way, or in a way that takes a long time because the work is not prioritised, and therefore not properly resourced. Councils (and Monitoring Officers in particular) will need to be self-critical in how they respond to these kinds of external drivers for change – and to ensure (as we write elsewhere) that a review of the constitution is not limited to a mechanistic review of the words on the page and the extent to which they marry up to legal requirements.

### *Changes to legislation*

Finally, drivers can arise from a substantial change in legislation (many councils undertook fairly significant changes to their constitutions in light of the Localism Act 2011).

## Step 3: Setting the scope and scale of the work

Members, and the council generally, may have the appetite for a fundamental review of the constitution alongside other governance documents – to overhaul the governance system fairly profoundly.

More likely, people will want to conduct a more limited exercise. This will be determined by some of the drivers set out above. In designing the process however it is important to note that a constitution review is not a typical, standalone council “project” – its scope and scale will have impacts on wider organisational development and transformation plans. In particular, we have found that there are important intersections with things like staff restructures and “culture change” programmes. Understanding where such projects may be in train (or may likely to be in the near future) is important in understanding where certain dependencies might lie.

As such, early liaison with officers in charge of OD and HR, those in charge of a Programme Management Office (if the council has one) and with roles in internal comms will be an important part of making the exercise work.

In setting the scope and scale of the work it is important to take into account two things:

- a “review of the constitution” can be extremely broad in scope, and given the dependencies described above, can impact a huge range of corporate and service issues – a scoping exercise will need to provide focus, in order to manage both member and officer expectations. For example, one conclusion of the planning process may be that improvements will need to take the form of an ongoing programme of review and improvement rather than the kind of review we suggest in this document;
- a review of the constitution, as we have noted elsewhere, should not be seen as a conventional “project”. The political dimension, as well as the impact of the work on the fundamentals of the way that the council is run, demand a different approach (which informs the process set out in this document).

## Step 4: Asserting basic principles for decision-making, oversight, and other key features of good governance

Once the drivers and scope of the work have been agreed, it can be useful for members to articulate the basic principles that they think are especially important to the way that the council works. This is likely to encompass a view on the division of responsibility between members, and between members and officers. It will inform how the more detailed process of redrafting should be undertaken.

- Decision-making overall. Where should the dividing line lie between member and officer decision-making? What does this mean, in practice, for things like the scheme of officer delegation? How open can policy development and decision-making be – assuming that we are operating from a presumption in favour of openness? How do we designate “key” decisions? How do we want and expect to work with our partners and the public? These, and related questions, concern the fundamentals of how a local authority operates. Being able to articulate the principles that govern how decision-making will work will provide consistency, and will make it easier to secure commitments to positive working behaviours. If people don’t understand why decision-making systems work as they do, and/or if those systems are seen as arcane and frustrating, they will not be taken seriously.
- Members’ contribution to decision-making (and member oversight). Under executive arrangements, members exert oversight, and provide direction, in a number of places – at full Council, in scrutiny committees, audit committee and occasionally in other forums – working groups, area committees and so on. Under the committee system, service committees provide a space both for decision-making, and for oversight.

Member oversight can be exerted in advance of a decision being made. This can be a form of “pre-decision” scrutiny, either a few weeks before Cabinet come to decide something, or longer in advance, as part of an active contribution to policy development). It can also take the form of scrutiny following a decision being made, in order to monitor the decision’s implementation. Having a sense of members’ expectations of the level of oversight they will have over decision-making, and delivery, is an important part of designing constitutional arrangements that feel balanced, and which provide for strong local accountability.

Particularly at the time of writing (March 2023), when councils are under great financial pressure, ensuring that consistent expectations exist around member oversight of financial issues is important.

- Officer oversight and management - Further to the general point above about the dividing line between members and officers, there needs to be a degree of confidence in those matters where officers will be empowered to make decisions, and to deal with problems and risks.
- The rights of the public - Although constitutions often contain little information other than that which is required by statute on the rights of the public, there is an opportunity to set out principles and commitments around the way that the council will consult and engage with residents, especially on important decisions. If commitments are made in such a way, there does of course need to be a way to back them up in practice.
- Partnership working. This phrase covers a range of connected issues:
  - The council’s relationship with certain statutory partners, like NHS bodies (through structures such as the Integrated Care Partnership) and combined authorities, where they exist;
  - The council’s relationship with outside bodies – organisations to which the council might nominate members to sit on boards and committees;
  - The council’s relationship with wholly or partly owned companies. The council may have shareholding and/or membership responsibilities which may need to be laid out in the constitution. Ensuring that company governance arrangements are clear – in particular, the responsibilities of members in overseeing company activity – is an extremely important part of the governance framework. More information can be found in “Local authority company review guidance” (Local Partnerships, 2021)

## **Step 5: Determining the structure of the constitution, setting expectations of how process and procedure will work in key areas of the governance framework**

We have already noted that most councils have stuck fairly closely to the constitutional structures set out in the Government's "Modular Constitution", produced in 2000. It deserves re-emphasis that this model, modular constitution is a piece of statutory guidance – councils therefore need to have regard to it in reviewing, and redrafting, their own constitutions.

Following the structure of the Modular Constitution makes it easier to ensure that the contents of the constitution are being managed properly and legally. The structure is also tried and tested, having been in operation in most councils for over two decades.

This does not however mean that it is perfect. Some councils have chosen to diverge, in part or more fundamentally, with the structures set out in the Modular Constitution. Often this is because the existing structure is seen as giving rise to a lot of duplication, and because the structure is difficult to navigate and follow for the non-expert reader.

A more fundamental restructure of the constitution can be useful for councils that want to use the exercise as a fundamental break with pre-existing practice. Where change is being pursued because of acknowledged governance failure, reworking the structure can make it easier to highlight the importance of – for example – member-officer relationships and good decision-making. But this does bring with it risks, particularly in putting in place novel arrangements and procedures untested elsewhere (though this may be attractive for councils with an appetite for innovation).

As well as agreeing the structure, this part of the process allows the key features of the new constitution to be discussed and agreed with members. This includes places where the constitution is likely to change fairly significantly – in part, to meet the needs of the drivers identified in the earlier stages. This might involve major changes to the scheme of delegation, the operation of scrutiny arrangements, arrangements for making key decisions and so on. Making sure that members are not only sighted on these changes, but active in setting parameters and expectations, is important.

## **Step 6: Undertaking detailed technical redrafting**

Once principles have been agreed and parameters for redrafting have been decided, detailed work can commence.

Carrying out a review in this way means that it is less likely that councillors will need to review technical detail as it is produced. If councillors have set the terms for that redrafting in the way described, officers can proceed with that work with the confidence that it will conform to members' expectations.

The alternative is a process by which changes are drafted and brought in their entirety to members to review – leading to a complex and heavy exercise which is likely to make poor use of everyone's time.

## Step 7: Adoption, embedding and familiarisation

When the redrafting process is complete, three things need to happen:

- The constitution needs to be formally adopted. This may be a three stage process – the final document may need to be considered by a working group, and then go to a formal council committee like Audit or General Purposes before being submitted for final approval at Council;
- The constitution needs to be embedded. There will be plenty of systems and written rules which sit outside the constitution – standard operating procedures that govern day to day work – that will need to be altered to ensure that they align with new constitution content;
- Work needs to be carried out to familiarise members and officers with the content of the constitution. Over a period of months some fairly sustained work will be necessary – some of it by way of coaching, some by way of formal training – to ensure that the key players in the governance framework are familiar with the constitution and are confident in using it and its rules.

### The timescale required

The timescale required for work of this nature depends on the scope of the work. Often councils will be working to the next council AGM – major changes to the constitution are usually agreed then. The actual technical act of redrafting the constitution may only take a few weeks, but the earlier stages can elongate the process. Providing member assurance at critical points can extend things further. Equally, trying to short-circuit the process by limiting member input can create significant delays where members consider that the outcomes of the exercise do not meet their expectations.

A longer process can have two key benefits – it allows for time to reflect on plans and to iterate, and it makes it easier to manage a review and revision of the constitution around other ongoing work. A shorter timescale will require more intensive work, with officers (and members) being pulled away from other duties, and the risk that process is rushed.

In all, a fairly comprehensive review followed by a redraft might take around six months on average.

## The detail of the constitution's contents

This section is designed to provide a general introduction to some of the common features of constitutions, to act as a spur to local conversation about what those features are meant to do, and how local arrangements might need to improve.

The order in which we deal with these issues is not presented to suggest a particular structure to the constitution itself.

### Preambles / introductions

The presence of a summary and explanation of the purpose and content of the Constitution is a legal requirement. Legislation in Wales goes further, requiring councils to produce a more accessible “guide” to the constitution.

A preamble can explain what the constitution is, and can act as a useful point for indexing and cross-reference. It is worth remembering that an important part of ensuring the accessibility of the constitution as a document, is about ensuring that it can be understood and used by a lay audience.

A preamble or introduction can also be the location for:

- material setting out the scheme of elections, and the composition of the council – as well as information about the rights of local residents<sup>1</sup>.
- rights of the public to access information, and council meetings, although these can also be found in committee procedure rules (see below).

Some constitutions have separate protocols setting out “community rights”, which go into much more detail on consultation, involvement, and more novel mechanisms for the public to feed into decision-making. As long as they are cross-referenced, we think that there is some logic in having central repository of information in the constitution about the council’s relationship with the public.

### Articles

While the Articles themselves are not a statutory requirement, their contents often are.

In many councils they act as a central repository of basic information about key bodies and structures within the council, including membership, terms of reference and other key information about those bodies and how they work together.

This information is often reproduced elsewhere in the constitution – but the Articles will often provide a useful introduction to those bodies and structures, and how they interact.

### Public rights

If it is not contained in a preamble or introduction, there will usually be a standalone part of the constitution that sets out the rights of the public. At a minimum, this will set out in respect of the public:

- their rights to vote in elections for the return of members of the authority;
- their rights to access to information about the authority’s activities;
- their rights of access to meetings of the council, its committees and sub-committees and any joint committees established with any other authority; and
- their rights of access to meetings of the executive and committees of the executive

<sup>1</sup> The Ministerial Direction expresses this content as setting out the “rights and responsibilities” of local residents, but we dislike this construction as it suggests that the presence of the rights is contingent on the fulfilment of responsibilities, which is of course not the case.

Sometimes councils will set out more detail in their constitution about public involvement – laying out the approach they will take towards consultation and how public views will be fed into the decision-making process.

## Decision-making, and member oversight (including councillors’ access to information)

### “Executive arrangements”: overview (including local choice functions)

Where a council operates “executive arrangements” those arrangements need, as a minimum, to provide a description of the functions of:

- The executive collectively (i.e., the whole of Cabinet acting together);
- The executive as individuals (where the Council has determined in the constitution that decision-making power will be held by certain cabinet members individually);
- The executive in relation to duties known as “local choice functions” – duties that can be performed either by the executive or by full Council.

Additionally, councils’ decision-making arrangements in the constitution will need to specify where certain decisions are not “executive” in nature and are reserved to full Council.

Legally, under executive arrangements there are a range of executive duties that are the responsibility of the executive alone. The executive powers are not “delegated” to that body by Council – they are conferred directly by legislation.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 sets out where certain decisions are the responsibility of the executive, the responsibility of full Council, or a matter of local choice. This can be difficult to practically unpick, because certain decisions (in practice) involve both the executive and full Council. One example is the budget – two others are planning and licensing, where individual decision-making is not an executive function but where the executive has a role in proposing the overall policy underpinning decision-making, subject to full Council approval.

The potential for confusion here means that councils will need strong and effective – and consistent – schemes for the delegation of decisions to officers, and to individual members (where appropriate). Delegation requires clarity as to the source of decision-making powers. We discuss this in more detail below.

### *The composition of executives*

Local authority executives are not required to be politically balanced. They are not “committees of the Council” and are not subject to the same rules and laws of ordinary council committees. The constitution has to lay out the names and responsibilities of Cabinet members – this might be here, later in the constitution under the Cabinet Procedure Rules or earlier, in the Articles.

The executive can establish sub-committees to which powers can be delegated – the constitution has to set out the membership of those bodies if they exist.

Although some councils have created the role of “cabinet assistants” or “portfolio holders’ assistants”, and these roles can sometimes be highlighted in the constitution, they have no legal power. As such, these individuals can sit on scrutiny committees (see below), although it is regarded as good practice that they should not sit on the scrutiny committee to which their portfolio responsibilities directly relate.

## Decision-making systems under the committee system

In the committee system all power is conferred by law onto full Council, which decides how then to delegate that power to various council committees. The composition of these service committees is required to be proportionate to the relative sizes of political parties at the authority. Political proportionality is covered in more detail elsewhere in this paper.

### The scheme of delegation

CfGS is producing separate, detailed, advice for councils on the operation of schemes of delegation.

The scheme sets out the legal arrangements by which certain roles and responsibilities can be carried out by officers and by individual Cabinet members (under executive arrangements).

The officer scheme of delegation needs to specify where executive decisions are delegated to officers – it will also need to set out where local choice functions, and functions of the Council, are so delegated. As we noted above there is scope for confusion here as officers may find themselves making decisions in adjacent areas, where the source for delegated powers in respect of those decisions comes from two distinct and different sources. Hence, the scheme of delegation requires detail and care in its design and application.

The scheme of delegation will put in place clear financial thresholds, under which certain officers will be empowered to take certain decisions. It might also impose an expectation that certain delegated decisions will need to be taken in consultation with Cabinet members, or other members. The requirement to consult councillors in this way cannot be a blanket one – officers need discretion to exercise their powers, and this should not be unreasonably fettered.

The officer scheme of delegation is also likely to include a description of who the “proper officer” is in respect of the transaction of certain statutory duties which are specifically given to officers in legislation.

### Scrutiny

CfGS has produced a significant amount of material in recent years on the components of effective scrutiny, much of which has been gathered together in “The good scrutiny guide” (CfGS, 2019). Government also published statutory guidance on the operation of scrutiny arrangements in 2019.

Scrutiny procedure rules will usually cover issues like:

- Scrutiny’s formal powers (to require the provision of information, the presence of officers at meetings, and responses from the council to reports and recommendations);
- The organisation of agendas, and work programming;
- The transaction of ordinary meetings;
- Scrutiny councillors’ access to information;
- The establishment of task and finish groups;
- Co-option onto committees (where relevant);
- The scrutiny of partner organisations and other bodies;
- Call-in. CfGS has produced detailed guidance on the operation of call-in arrangements.



## Member access to information

Some councils bring together members' rights of access to information together with the rights of the public in a single place. Some deal with it separately. Some spread material on member access to information across numerous sets of rules of procedure, which can lead to repetition and the introduction of inconsistencies. Generally speaking, a single, stand-alone protocol on this important topic (referenced prominently in other rules of procedure) will provide members with clarity and assurance.

This will cover statutory rights to information for all councillors (and potentially the enhanced rights available to members of scrutiny committees – see above) as well as the common law “need to know” provisions, generally seen as entitling councillors to access to information and documents where they can reasonably demonstrate that their role requires that information be made available to them.

## Behaviours, ethics, and conduct

A member code of conduct, an officer code of conduct and a member/officer protocol (setting out mutual roles, responsibilities, and obligations) are important features.

Principles around ethical behaviour begin with the Nolan Principles. These fundamental principles should be set out in every constitution and provide the basis for discussion on standards and conduct, applying as they do to both members and officers. They will inform the contents of the following documents:

- The Member Code of Conduct. Many councils have chosen to adopt (with or without adaptation) the LGA's Model Member Code of Conduct (2021). However, in doing so councils should recognise that the adoption wholesale of nationally-produced guidance is likely not to lead to improvements in behaviour. Discussion of what the Code means locally, and how people propose to live up to its values, are important, as we note below;
- The Officer Code of Conduct. This may make reference to a values framework to which officers are subject. It is important that the officer code of conduct is consistent with the officer code, and that it ties in to expectations around performance and line management, including through appraisal;
- The Member-Officer Protocol. It is fairly common for a protocol to be in place which sets out the respective roles and relationships, and shared responsibilities, between members and officers. This should inform the design of the scheme of delegation, and the individual Codes of Conduct – it is about ensuring that there is a common understanding about the behaviours and standards expected. The Protocol should also cover the kind of support that members can expect from officers – the support available to individual political groups (through political assistants and otherwise) and so on;
- The register of members' interests.

This part of the constitution is also likely to set out detail on the recruitment of chief officer posts, and arrangements for discipline, and termination of employment, of chief officers. Member Panels are usually established in the constitution, but convened only as and when to deal with chief officer employment needs. Arrangements here need to take account of employment law and relevant NJC provisions.

## The LGA Member Code of Conduct

The LGA has produced various resources to support councils and councillors to maintain high standards of conduct and behaviour in public life. The LGA has produced:

- Guidance on the Model Code: <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>
- Training resources for councils to use with their members, which can be accessed by e-mailing [modelcode@local.gov.uk](mailto:modelcode@local.gov.uk)
- E-learning materials, which can be accessed at <https://www.local.gov.uk/our-support/leadership-workforce-and-communications/councillor-development/councillor-e-learning>

## Standing Orders, and rules of procedure

### Council procedure rules / standing orders

CfGS is producing separate advice on the operation of full Council meetings.

Council Standing Orders tend to be detailed, and with this detail come risk. Argument about the nature of Standing Orders can lead to the overuse of points of order and points of explanation in Council meetings. This is a practice that is legitimate in terms of ensuring that meetings are carried on in a way that is legally compliant, but a preoccupation with process can risk deadening the quality of Council debate.

Standing Orders will provide for things like:

- The role of the Chair of the Council, who may be styled as Mayor (or Lord Mayor, further to letters patent). In some Councils the role of Council Chair (as the person who chairs meetings) is distinct from the role of the “Civic Mayor”, with these roles being carried out by two different people, although this is unusual. It is quite common for the role of a “Deputy Mayor” to exist – this person may go on to be the Mayor the following year or may have been Mayor the previous year;
- The usual format of agendas for ordinary Council meetings, and for extraordinary Council meetings, the Annual General Meeting of the Council and the meeting of Council at which the budget and policy framework is agreed;
- Public access to meetings, and the posing of questions by members of the public, including the timescales within which questions must be notified to the Council, and the right to ask supplementary questions (which some Councils provide for and some do not). In some councils answers to questions are provided in the meeting itself – in some cases this happens afterwards, in writing;
- The making of reports by the Leader, by Cabinet members and by chairs of committees. It used to be common for reports on committee business, and even the minutes of council committees, to be referred to Council for discussion and agreement – this is now unusual, and does not constitute good practice;
- The posing of questions by councillors to executive members, and/or chairs of committees;
- The proposing and seconding of motions by councillors, including timescales for the notification of motions, and arrangements for the proposing of amendments to motions;
- The consideration of call-ins, where a call-in has been referred to Council because an overview and scrutiny committee considers that the decision in question has been made outside the budget and policy framework;
- The length of time that councillors can address the meeting for, in respect of all of the above matters;

- Rules relating to the keeping of order in the meeting;
- Rules about the operation of a guillotine to adjourn the meeting after a certain period even if business has not concluded.

This is not an exhaustive list.

## **Committee, cabinet and scrutiny procedure rules**

### *Executive*

Executive or Cabinet procedure rules will set out the way in which Cabinet meetings will be transacted, and the usual way that the agenda will be arranged for those meetings. It may include the kinds of information we list above for Council meetings in relation to Cabinet meetings. In many councils the public may ask questions at Cabinet meetings but – as with Council meetings – there is usually an expectation that questions be notified beforehand, and usually supplementary questions cannot be asked.

Sometimes here (and sometimes in the Articles) will be a list of the collective responsibilities of Cabinet alongside – if relevant – a description of the portfolios of individual Cabinet members and the names of the people occupying these positions. Sometimes these portfolios will bring with them individual rights to make decisions, although some councils make all Cabinet decisions collectively.

These procedure rules may also be the place to set out a more detailed protocol around how key decisions, and other executive decisions, may be made. This might take the form of flowcharts or process diagrams. It is likely to be necessary to supplement material on decision-making in the constitution with more detailed guidance for officers and members; if so this should also be publicly available.

### *Scrutiny*

Procedure rules on scrutiny will set out the powers of the function in legislation, its role in the authority, its approach to work programming and other matters covered in the 2019 “Statutory Guidance on Overview and Scrutiny in Local Authorities”.

Councils needing more advice on mechanisms to support effective scrutiny should read “The good scrutiny guide” (CfGS, 2019).

### *Committee*

Other, general, procedure rules may apply to meetings of the audit committee, or the standards committee, or committees like General Purposes, if present at the Council. In drafting these PRs Councils will need to have regard of the likelihood that a range of formal and informal guidance will exist around the operation of these bodies.

## Remote meeting arrangements

At present councils in England are not permitted to convene meetings remotely. Members of committees need to be physically present in order to participate.

Some councils do provide for the remote attendance of some meeting participants (witnesses, and other contributors), but this needs to be in a way that conforms with the law.

## Other procedure rules

Procedure rules relating to contracts (including procurement) and financial matters are a major component of the constitution, as are planning and licensing procedure rules.

Detailed information on financial procedures can be found in the CIPFA/SOLACE document, “Delivering Good Governance in Local Government: Framework” (2016): <https://www.cipfa.org/policy-and-guidance/publications/d/delivering-good-governance-in-local-government-framework-2016-edition>. The “Financial Management Code” (CIPFA, 2019): <https://www.cipfa.org/fmcode> also provides important information.

The contents of these parts of the constitution reflect the legislation governing those council functions – this document does not cover those requirements.

## Remuneration

Either in a separate protocol, or included in a section on members’ roles, will be information on councillors’ allowances.

Council has to agree (usually at Council AGM, and subject to the recommendation of the Independent Remuneration Panel) the remuneration for councillors carrying out different roles. All councillors are entitled to a basic allowance to support them to carry out their duties. Other councillors will be entitled to a “special responsibility allowance” (SRA), which will reflect other tasks and roles to which they have been appointed. Being the Leader, being on Cabinet and chairing a committee will usually attract an SRA. Vice-chairs of certain committees, and sometimes ordinary members of planning or licensing committees, may also be entitled to an SRA.

## Company and partnership governance, and outside bodies

Some councils operate trading companies or are part of joint ventures, and other forms of partnership working. Protocols and other rules about how they authority will carry out its shareholder duties may form a part of the constitution.

The constitution may also set out information on councillors’ membership of outside bodies.

## What needs to be in a council constitution

*Extract from Paragraph 3 of the Local Government Act 2000 (Constitutions) (England) Direction 2000. It should be noted that this is not an exhaustive list of \*everything\* that needs to be in a Council constitution. More recent enactments impose obligations on councils to carry out certain functions with regard to governance and decision-making, and specifying these functions in the Constitution is a way of ensuring compliance. For example, councils need to designate a committee as one that undertake scrutiny of the community safety partnership under the Police and Justice Act 2006.*

- a. a summary and explanation of the purpose and content of the constitution;
- b. a description of the composition of the council, the scheme of ordinary elections for members of the council and their terms of office;
- d. the scheme of allowances for members of the authority drawn up in accordance with regulations made under section 18 of the Local Government and Housing Act 1989 (c.42);
- f. a description of the roles of the authority itself under executive arrangements or, as the case may be, alternative arrangements including:
  - i. the functions which may be exercised only by the authority itself or which may to some extent be exercised only by the authority itself (including, in the case of a local authority operating executive arrangements any plans and strategies which are subject to approval or adoption by the authority itself by virtue of regulation 5 of, and paragraph 1 of Schedule 4 to, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853)); and
  - ii. any rules governing the conduct and proceedings of meetings of the authority itself whether specified in the authority's standing orders or otherwise,
- j. a description of those powers of the executive which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months;
- k. a description of the arrangements for the operation of overview and scrutiny committees including:
  - i. the terms of reference and membership of those committees and any rules governing the exercise of their functions; and
  - ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise
- l. in the case of a local authority which is operating executive arrangements, a description of the roles of the executive, committees of the executive and members of the executive including:
  - i. the roles, functions, rights, responsibilities and duties of members of the executive;
  - ii. in the case of a local authority which is operating executive arrangements which include a leader and cabinet form of executive, any rules governing the election of the executive leader;
  - iii. any rules governing the appointment of members of the executive;
  - iv. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of the executive;
  - v. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of any committees of the executive;
  - vi. any provisions in the local authority's executive arrangements with respect to the appointment of committees of the executive; and vii. in the case of a local authority which is operating executive arrangements which include a mayor and council manager form of executive, any roles of committees appointed by the elected mayor to advise the executive in accordance with paragraphs 3(14) and (15) of Schedule 1 to the Act,

- n. a description of the roles of any committees or sub-committees appointed by the authority in accordance with section 101 of the Local Government Act 1972 (c.70) including:
  - i. the membership, terms of reference and functions of such committees or subcommittees; and
  - ii. any rules governing the conduct and proceedings of meetings of those committees or sub-committees whether specified in the authority's standing orders or otherwise,
- o. a description of those powers of the council which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months;
- p. a description of the roles of the local authority's Standards Committee and any parish council sub-committee of the Standards Committee appointed in accordance with sections 53 or 55 of the Act including:
  - i. the membership, terms of reference and functions of that committee or sub-committee; and
  - ii. any rules governing the conduct and proceedings of meetings of that committee or subcommittee whether specified in the authority's standing orders or otherwise;
- q. a description of the roles of any area committees appointed by the authority to exercise functions in accordance with regulations 16A of the Local Government (Committees and Political Groups) Regulations 1990 (SI 1990/1553) or, as the case may be, section 18 of the Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (SI 2000/2851) including:
  - i. the membership, terms of reference and functions of such committees; and
  - ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise,
- r. a description of any joint arrangements made with any other local authorities under section 101(5) of the Local Government Act 1972 including:
  - i. the terms of those arrangements;
  - ii. the membership, terms of reference and functions of any joint committees established under those arrangements; and
  - iii. any rules governing the conduct and proceedings of meetings of those joint committees whether specified in the authority's standing orders or otherwise,
- s. a description of any arrangements made with another local authority for the discharge of functions by that other local authority or the executive of that other local authority in accordance with section 101(1)(b) of the Local Government Act 1972 or, as the case may be, Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000;

- t. a description of the roles of officers of the local authority including:
  - i. the management structure for officers of the authority;
  - ii. any arrangements made under section 101 of the Local Government Act 1972 or, as the case may be, section 14, 15 or 16 of the Act for the discharge of functions by officers of the authority;
  - iii. the roles and functions of the head of paid service, monitoring officer and chief finance officer;
  - iv. t
  - u. a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to meetings of the authority, committees and sub-committees of the authority, joint committees established with any other local authority, the executive and committees of the executive.
  - v. a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to information about the decisions made or to be made by in respect of local authority's functions and activities.
- w. a register stating
  - ii. the name of every member of each committee of the local authority's executive for the time being.
- x. a description of the rules and procedures for the management of its financial, contractual and legal affairs including:
  - i. procedures for auditing of the local authority;
  - ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise;
  - iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and
  - iv. rules and procedures in respect of legal proceedings brought by and against the local authority, and
- y. a description of the register of interests of members and co-opted members of the authority required under section 81 of the Act, together with the procedures for publicising, maintaining and updating that register.
- z. a description of the rules and procedures for review and revision of the authority's constitution and executive arrangements or, as the case may be, alternative arrangements.

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