

PART 2

ARTICLES OF THE CONSTITUTION

Article 1 – The Constitution

1.01 Powers of the Council

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

1.02 The Constitution

This Constitution, and all its appendices, is the Constitution of the Rochford District Council.

1.03 Purpose of the Constitution

The purpose of the Constitution is to:

1. enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
2. support the active involvement of citizens in the process of local authority decision making;
3. help Councillors represent their constituents more effectively;
4. enable decisions to be taken efficiently and effectively;
5. create a powerful and effective means of holding decision-makers to public account;
6. ensure that no-one will review or scrutinise a decision in which they were directly involved;
7. ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. provide a means of improving the delivery of services to the community.

1.04 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 14.

Article 2 – Members of the Council

2.01 **Composition and eligibility**

- (a) **Composition.** The Council will comprise 39 members, otherwise called Councillors. One or more councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the district or those living or working there will be eligible to hold the office of Councillor.

2.02 **Election and terms of Councillors**

Election and terms. The ordinary election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May in each year beginning in 2003, except that in 2005 and every fourth year after there will be no regular election. The terms of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

2.03 **Roles and functions of all Councillors**

- (a) **Key roles.** All Councillors will:
 - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
 - (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
 - (iii) effectively represent the interests of their ward and of individual constituents;
 - (iv) respond to constituents' enquiries and representations, fairly and impartially;
 - (v) participate in the governance and management of the Council; and
 - (vi) maintain the highest standards of conduct and ethics.
- (b) **Rights and duties**
 - (i) Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
 - (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.
 - (iii) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.

2.04 Conduct

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

2.05 Allowances

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

Article 3 – Citizens and The Council

3.01 Citizens' rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the area have the right to vote and sign a petition to request a referendum for an elected mayor form of Constitution.
- (b) **Information.** Citizens have the right to:
 - (i) attend meetings of the Council and its Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (ii) see reports and background papers, and any records of decisions made by the Council and
 - (iii) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to participate in the Council's question time and contribute to investigations by overview and scrutiny committees.
- (d) **Complaints.** Citizens have the right to complain to:
 - (i) the Council itself under its complaints scheme;
 - (ii) the Ombudsman after using the Council's own complaints scheme;
 - (iii) the Standards Board for England about a breach of the Councillor's Code of Conduct.

3.02 Citizens' responsibilities

Citizens must not be violent, abusing or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.

Article 4 – The Full Council

4.01 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- Best Value Performance Plan;
 - Community Care Plan;
 - Community Strategy;
 - Crime and Disorder Reduction Strategy;
 - Plans and strategies which together comprise the Development Plan;
 - Council's Corporate Plan (if any);
 - Food Law Enforcement Service Plan;
 - The plan and strategy which comprise the Housing Investment Programme;
 - Local Agenda 21 Strategy
 - IS/IT Strategy
 - Asset Management Plan
 - Leisure Strategy
- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.
- (c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

4.02 Functions of the full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;
- (c) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;

- (d) appointing representatives to outside bodies unless the appointment has been delegated by the Council;
- (e) adopting an allowances scheme under Article 2.05;
- (f) changing the name or the area on conferring the title of honorary alderman;
- (g) confirming the appointment of the head of paid service;
- (h) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills; and
- (i) all other matters which by law must be reserved to Council.

4.03 Council Meetings

There are three types of Council meeting:

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

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

Article 5 – Chairing The Council

TITLE OF THE PERSON CHAIRING COUNCIL MEETINGS

5.01 Role and function of the chairman

The chairman of council and in their absence, the vice-chairman will have the following roles and functions:

CEREMONIAL ROLE

The Chairman acts in a non-political capacity as a symbol of the authority. On civic and ceremonial occasions the Chairman represents the District and its inhabitants and fulfils the role of ambassador for the Council in its relationship with society at large.

CHAIRING THE COUNCIL MEETING

The chairman will be elected by the Council annually. The chairman will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council in an impartial fashion so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who do not sit on policy committees or hold committee chairmanships are able to hold the members of the policy committees and committee chairmen to account;
4. to promote public involvement in the Council's activities;
5. to be the conscience of the council; and
6. to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

Article 6 – Overview and Scrutiny Committees

6.01 Terms of Reference

The Council will appoint the overview and 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 regulations proposed 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.

Finance & Procedures	The Council's budget, the management of its budget, capital and revenue borrowing, assets and audit arrangements, Policies and Strategies of the Council and other bodies which affect the economic, social and political resources available to the district including best value, the community plan, corporate plan, local democracy and the achievement of objective transparent and accountable decision making by the Council.
Community	All Council services relating to Recreation, Leisure, Culture, Tourism, Public Health, Housing (public & private) Community Safety and Emergency Planning.
Environment	All Council services relating to Highways Transportation, Planning Policy, Building Control, Recycling, Waste Collection and Disposal, the Environment, Regeneration Economic Development and Health & Safety.

6.02 General role

Within their terms of reference, overview and scrutiny committees will:

- i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- ii) make reports and/or recommendations to the full Council and/or any policy; joint or area committee in connection with the discharge of any functions;
- iii) consider any matter affecting the area or its inhabitants;
- iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by any policy or area committees; and
- v) undertake the conduct of Best Value reviews.

6.03 Specific functions

- (a) **Policy development and review.** Overview and scrutiny committees may:
- i) assist the Council in the development of its budget and policy framework by in-depth analysis of policy issues;
 - ii) conduct research, community and other consultation in the analysis of policy issues and possible options;
 - iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
 - iv) question members of committees, chief officers and heads of service about their views on issues and proposals affecting the area; and
 - v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- (b) **Scrutiny.** Overview and scrutiny committees may:
- i) review and scrutinise the decisions made by and performance of committees and council 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 committees, chief officers and heads of service 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 appropriate committee and/or Council 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 address the overview and scrutiny committee and local people about their activities and performance; and
 - vi) question and gather evidence from any person (with their consent).
- (c) **Finance.** Overview and scrutiny committees may exercise overall responsibility for the finances made available to them.
- (d) **Annual report.** Overview and scrutiny committees must report annually to full Council on their workings and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers.** Overview and scrutiny committees may exercise overall responsibility for the work programme of the officers employed to support their work.

6.04 Proceedings of overview and scrutiny committees

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

Article 7 – Policy and other committees

7.01 Policy and other committees

The Council will appoint the committees set out in the left hand column of the table Responsibility for Functions in Part 3 of this Constitution to discharge the functions described in column 3 of that table.

Article 8 - The Standards Committee

8.01 Standards Committee

The Council meeting will establish a Standards Committee.

8.02 Composition

POLITICAL BALANCE

(a) **Membership.** The Standards Committee will be composed of at least:

- two councillors;
- one person who is not a councillor or an officer of the council or any other body having a standards committee (an independent member);
- one member of a parish council wholly or mainly in the Council's area (a Parish Member).

(b) **Independent members.** Independent members will be entitled to vote at meetings;

(c) **Parish members.** At least one parish member must be present when matters relating to those parish councils or their members are being considered;

8.03 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 the councillors and, co-opted members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train councillors and co-opted members on matters relating to the Members' Code of Conduct;

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- (f) granting dispensations to councillors and co-opted members from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the monitoring officer on any matter which is referred by an ethical standards officer to the monitoring officer.

ADDITIONAL PARISH COUNCIL ROLE IN DISTRICT AND UNITARY COUNTY COUNCILS

- (h) the exercise of (a) to (g) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils.

Article 9 – Area Committees and Forums

9.01 **Area committees**

As a fully parished district the Council believes that the role and function of Area Committees and Forums is fulfilled by its parish councils.

Article 10 – Joint Arrangements

10.01 Arrangements to promote well being

The Council, in order to promote the economic, social or environmental well-being of its area, 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.

10.02 Joint arrangements

- (a) The Council may establish joint arrangements with one or more Local Authorities and/or their executives to exercise functions in any of the participating Authorities, or advise the Council. (Such arrangements may involve the appointment of a joint committee with these other Local Authorities).
- (b) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution.

10.03 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If the joint committee contains members who are not on the executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

10.04 Delegation to and from other Local Authorities

- (a) The Council may delegate functions to another Local Authority or, in certain circumstances, the executive of another Local Authority.
- (b) The decision whether or not to accept such a delegation from another Local Authority shall be reserved to the Council meeting.

10.05 Contracting out

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

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

Article 11 – Officers

TERMINOLOGY

11.01 Management Structure

- (a) **General.** The full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The full Council will engage persons for the following posts, who will be designated chief officers:

Post	Functions and areas of Responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all officers)</p> <p>Provision of professional advice to all parties in the decision making process</p> <p>Together with the monitoring officer, responsibility for a system of record keeping for all the Council's decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council)</p>
Corporate Director (Law Planning & Administration)	<p>Central support services, administration and legal, governance support.</p> <p>Development control, the local plan, regeneration, building control</p>
Corporate Director (Finance & External Services)	<p>Finance, housing functions. External Contracts, highways and transportation leisure and environmental health</p>

- (c) **Head of paid service, monitoring officer and chief financial officer.**
The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Corporate Director (Law, Planning and Administration)	Monitoring Officer
Corporate Director (Finance and External Services)	Chief Finance Officer

Such posts will have the functions described in Article 11.02 – 11.04 below.

- (d) **Structure.** The head of paid service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part 7 of this Constitution.

11.02 Functions of the head of paid service

- (a) **Discharge of functions by the Council.** The head of paid service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- (b) **Restrictions on functions.** The head of paid service may not be the monitoring officer but may hold the post of chief finance officer if a qualified accountant.

11.03 Functions of the monitoring officer

- (a) **Maintaining the Constitution.** The monitoring officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making.** After consulting with the head of paid service and chief finance officer, the monitoring officer will report to the full Council if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The monitoring officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports.** The monitoring officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The monitoring officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper officer for access to information.** The monitoring officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (g) **Providing advice.** The monitoring officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity to all Councillors.

- (h) **Restrictions on posts.** The monitoring officer cannot be the chief finance officer or the head of paid service.

11.04 Functions of the chief finance officer

- (a) **Ensuring lawfulness and financial prudence of decision making.** After consulting with the head of paid service and the monitoring officer, the chief finance officer will report to the full Council and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs.** The chief finance officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management.** The chief finance officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice.** The chief finance officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Councillors and will support and advise Councillors and Officers in their respective roles.
- (e) **Give financial information.** The chief finance officer will provide financial information to the media, members of the public and the community.

11.05 Duty to provide sufficient resources to the monitoring officer and chief finance officer

The Council will provide the monitoring officer and chief finance officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

11.06 Conduct

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 5 of this Constitution.

11.07 Employment

The recruitment, selection and dismissal of officers will comply with the officer Employment Rules set out in Part 4 of this Constitution.

Article 12 – Decision Making

12.01 Responsibility for decision making

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

12.02 Principles of decision making

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

PRINCIPLES OF DECISION MAKING

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights.
- (d) A presumption in favour of openness; and
- (e) Clarity of aims and desired outcomes.

12.03 Decision making by the full Council

Subject to Article 12.06 the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

12.04 Decision making by overview and scrutiny committees

Overview and scrutiny committees will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

12.05 Decision making by other committees and sub-committees established by this Council

Subject to Article 12.06, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

12.06 Decision making by Council bodies acting as tribunals

The Council, a councillor or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice

and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

Article 13 – Finance, Contracts and Legal Matters

13.01 Financial management

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in Part 4 of this Constitution.

13.02 Contracts

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

13.03 Legal proceedings

The Corporate Director (Law Planning and Administration) is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Corporate Director (Law Planning and Administration) considers such action is necessary to protect the Council's interests.

13.04 Authentication of documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Corporate Director (Law Planning and Administration) or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

13.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Corporate Director (Law Planning and Administration). A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Corporate Director (Law Planning and Administration) should be sealed. The affixing of the Common Seal will be attested by the Corporate Director (Law Planning and Administration) or some other person authorised by him/her.

Article 14 – Review and Revision of the Constitution

14.05 Duty to monitor and review the constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

Protocol for monitoring and review of constitution by monitoring officer

A key role for the monitoring officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task the monitoring officer may:

1. observe meetings of different parts of the member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

14.02 Changes to the Constitution

- (a) **Approval.** Changes to the constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer.
- (b) **Change within a mayoral form of executive.** Unless the change relates only to the operation of overview and scrutiny committees, any resolution of the full Council to approve a change will have no effect without the written consent of the mayor.
- (c) **Change from a mayoral form of executive to another form of executive or to alternative arrangements, or from alternative arrangements to a mayoral form of executive.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum. The change will not take effect until the end of the mayor's term of office.
- (d) **Change from a leader and cabinet form of executive to alternative arrangements, or vice versa.** The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.

Article 15 – Interpretation and Publication of the Constitution

15.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend.** A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension.** The following Rules may be suspended in accordance with Article 15.01:
 - (i) Rules of Procedure
 - (ii) Budget & Policy Framework Procedure Rules
 - (iii) Financial Procedure Rules
 - (iv) Contracts Procedure Rules

15.02 Interpretation

The ruling of the chairman of council as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

15.03 Publication

- (a) The Corporate Director (Law Planning and Administration) will give a printed copy of this Constitution to each member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the member first being elected to the Council.
- (b) The Corporate Director (Law Planning and Administration) will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Corporate Director (Law Planning and Administration) will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

