

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 15.

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 have proper regard for the Code of Conduct on Planning Matters 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.

2.06 **Training**

The Council will ensure that Councillors have the opportunity for adequate training for their roles and duties.

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) attend meetings of the executive board when key decisions are being considered;
 - (iii) find out from the forward plan what key decisions will be taken by the executive board and when;
 - (iv) see reports and background papers and any records of decisions made by the Council; and
 - (v) 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, to participate in discussion at Area Committees when acting as a Community Forum and to contribute to investigations by the Review Committee.
- (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, abusive 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:-

(i) *those required by Functions & Responsibilities Regulation 2001 to be adopted by the Council:-*

- Best Value Performance Plan;
- Community Care Plan;
- Community Strategy;
- Crime and Disorder Reduction Strategy;
- Plans and strategies which together comprise the Local Development Framework;
- Plans or strategies for the control of the Council's borrowing or capital expenditure
- Plans or strategies or draft plans or strategies of any of the above descriptions which have to be submitted to the Secretary of State or a Minister for approval

(ii) *other plans and strategies of a kind recommended by guidance to be adopted by the Council as part of the Policy Framework:-*

- Council's Corporate Plan (if any);
- Food Safety Service Plan;
- The plan and strategy which comprise the Housing Investment Programme;
- Local Agenda 21 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, but does not include the approval of supplementary estimates, the setting of fees and charges and other minor variations to budget or capital programme so far as these are delegated to an officer, the Executive Board or a Committee.

(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) appointing the Leader and members of the Executive Board except those appointed under Article 10.02(iv) (Chairmen of Area Committees)
- (d) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an Executive Board function which is covered by the policy framework or budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget,
- (e) agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them (except for authorised substitutions to Committees under Rule 4 of the Council Procedure Rules in Part 4 of this Constitution);
- (f) appointing representatives to outside bodies unless the appointment is an executive board function or has been delegated by the Council;
- (g) adopting an allowances scheme under Article 2.05;
- (h) changing the name of the area;
- (i) conferring the title of Honorary Alderman;
- (j) confirming the appointment of the Head of Paid Service;
- (k) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills; and
- (l) all other matters which by law must be reserved to Council.

4.03 The full Council is not required to approve:-

- (i) amendments or revocations of any plan or strategy necessary to give effect to the requirements of the Secretary of State or Minister made when he was asked to approve it;
- (ii) amendments or revocations to any plan or strategy if the Council has delegated the power to amend or revoke it to a Committee or Sub-Committee or Officer either in this Constitution or at the time it approved the plan or strategy.

4.04 **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.

4.05 **Responsibility for Functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Executive Board.

Article 5 – Chairing The Council

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 the Executive Board or hold committee chairmanships are able to hold the Members of the Executive Board 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 Committee (Review Committee)

6.01 Terms of Reference

The Council will appoint an Overview and Scrutiny Committee to discharge the functions conferred by S21 of the Local Government Act 2000 or regulations under section 32 of the Local Government Act 2000. The Overview and Scrutiny Committee will be titled the Review Committee and have eight Members or as the Council shall decide.

6.02 General role

Within this Constitution, the Review Committee may:-

- 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 the Executive Board 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 the Executive Board and/or and policy or Area Committee; and
- v) undertake the conduct of Best Value Reviews.

6.03 Specific functions

(a) **Policy development and review.** The Review Committee may:-

- i) assist the Council and the executive board 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 the Executive Board and other 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.** The Review Committee may:-
 - i) review and scrutinise the decisions made by and performance of the Executive Board, other 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 the Executive Board, other 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 Executive Board and/or 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 Review Committee and local people about their activities and performance; and
 - vi) question and gather evidence from any person (with their consent).
- (c) **Finance.** The Review Committee may be allocated funding for its role by the Council and will exercise overall responsibility for the finances made available to it.
- (d) **Annual report.** The Review Committee must report annually to Full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers.** The Review Committee may exercise overall responsibility for the work programme of the Officers employed to support its work.

6.04 **Proceedings of the Review Committee**

The Review Committee will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Article 7 – The Executive Board

7.01 **Role**

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

7.02 **Form and Composition**

The Executive Board will consist of the Leader, the deputy Leader and 3 Chairmen of Area Committees together with at least 1 but not more than 4 Councillors appointed by the Council

7.03 **Leader**

The Leader will be a councillor elected to the position of Leader by the Council and will be the Chairman of the Executive Board. The Leader will hold office until:

- (a) the next annual meeting of Council; or
- (b) they resigns from the office; or
- (c) they are suspended from being a councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (d) they are no longer a district councillor; or
- (e) they are removed from office by resolution of the Council

7.04 The Leader and any member of the Executive Board may attend any committee to which they have not been appointed by name and may speak but not vote.

7.05 **Deputy Leader and other Executive Committee Members**

The deputy Leader will be a councillor elected to the position of deputy Leader by the Council and will be Vice Chairman of the Executive Board.

The deputy Leader and other Executive Committee members shall hold office until:

- (a) the next annual meeting of Council; or
- (b) they resign from office; or
- (c) they are suspended from being councillors under Part II of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (d) they are no longer district councillors; or

- (e) they are removed from office, either individually or collectively, by resolution of the Council

7.06 Proceedings of the Executive Board

Proceedings of the Executive Board shall take place in accordance with the Executive Board Procedure Rules set out in Part 4 of this constitution

7.07 Responsibility for functions

The Leader will maintain a list in Part 3 of this Constitution setting out responsibility for the exercise of particular Executive Board functions.

7.08 Failure to Attend

If a member of the Executive Board fails throughout a period of 6 months from his last attendance to attend a meeting of the Executive Board then, unless the failure was due to some reason approved by the District Council, he or she shall cease to be a member of the District Council.

(Article 7 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and other Provisions) (England) Order 2001.)

Article 8 – Regulatory Other Committees

8.01 **Regulatory and other Committees**

The Council will appoint the Committees set out in Part 3 of this Constitution to discharge the functions under each Committee therein.

Article 9 - The Standards Committee

9.01 Standards Committee

The Council meeting will establish a Standards Committee.

9.02 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);
- two Members 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 who is not also a District Councillor must be present when matters relating to Parish Councils or their Members are being considered;

Provided always that at least 25% of the Standards Committee are Independent Members.

9.03 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;
- (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.
- (h) determining the annual Member Training Programme.

ADDITIONAL PARISH COUNCIL ROLE IN DISTRICT AND UNITARY COUNTY COUNCILS

- (i) 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.

9.04 Hearings

Hearings of the Standards Committee will be conducted in accordance with the Procedure for Local Determinations set out in Part 4 of this Constitution.

Article 10 – Area Committees and Forums

10.01 Area Committees

The Council may appoint Area Committees as it sees fit if it is satisfied that to do so will improve service delivery in the context of Best Value and facilitate more efficient, transparent and accountable decision-making. The Council will consult with relevant parish and town councils and the chairmen of relevant parish meetings when considering whether and how to establish area committees

10.2 Forum Composition and Function

Forum

- (i) The Council will appoint three area committees as follows;
- West – Comprising the areas of Rawreth Parish and Rayleigh Town Council (19 Members)
 - Central – Comprising the areas of Hullbridge, Hockley and Hawkwell Parish Councils (11 Members)
 - East – Comprising the areas of Rochford, Ashingdon, Canewdon, Stambridge, Sutton, Paglesham, Barling Magna, Great Wakering and Foulness Island Parish Councils (9 Members)

Composition

- (ii) The Area Committees will comprise the Councillors whose wards are within their area. No political balance is necessary
- (iii) Each Area Committee will be chaired by a Councillor elected by the Area Committee
- (iii) The Chairman of each Area Committee shall be appointed to the Executive Board
- (iv) Representatives from the local Parish and Town Councils, the local police and the County Council may be co-opted to the appropriate Area Committee but will not have the ability to vote.

Function

- (i) Each Area Committee will have the following terms of reference:
- (a) In respect of their local area and subject to Council Policy to;
- identify the needs of the Community through consultation and the involvement of the community and other appropriate bodies including the Environment, Community Health and Social Care, Crime and Disorder, Street Scene, Recreation, Leisure and

Tourism and Local Highways matters that affect it, advising the Executive Board as appropriate on such issues.

- seek agreement from the Executive Board for changes to services to meet local needs that are outside the immediate responsibility/budget of the Area Committee in respect of, for example:

Refuse collection,
Street cleaning,
Environmental maintenance
Grounds maintenance,
Local parks and playing fields,
Children's play areas,

including seeking agreement for revenue and capital expenditure to meet any changes. (If such changes would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, then subject to any discretion granted to the Executive Board by the Council, the Executive Board will refer the matter to Council).

- monitor of local service delivery, consideration of the outcome of such monitoring and advising the Executive Board and the Review Committee as appropriate
- make arrangements for the provision of information about local services and other information to people in the area.
- act as a Community Forum where the Area Committee and members of the community can discuss issues of concern to them, such issues to include matters that are the direct responsibility of the Council and other issues that are the responsibility of other organisations
- exercise delegated authority

(b) Delegations. The Council and the Executive Board will include details of the delegations to area committees in Part 3 of this Constitution, including the functions delegated showing which are the responsibility of the Executive Board and which are not, the composition and membership of the committees, budgets and any limitation on delegation

10.3 **Conflicts of Interest – Membership of Area Committees and Overview & Scrutiny Committees**

- (a) **Conflict of Interest.** If an Overview and Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of the Area Committee of which the Councillor concerned is a Member, then the Councillor may not speak or vote at the Overview and Scrutiny

Committee meeting unless a dispensation to do so is given by the Standards Committee

- (c) **General Policy Reviews.** Where the Overview and Scrutiny Committee is reviewing policy generally the Member must declare his/her interest before the relevant agenda item is reached, but need not withdraw.

10.6 Area Committees – Access to Information

Area Committees will comply with the Access to Information Rules in Part 4 of this Constitution. Agendas and notices for Area Committee meetings which deal with both functions of the Executive Board and functions which are not the responsibility of the Executive Board will state clearly which items are which.

10.7 Executive Members on Area committees

A Member of the Executive Board may serve on Area Committee if otherwise eligible to do so as a Councillor

Article 11 – Joint Arrangements

11.01 Arrangements to promote well being

The Council or Executive Board, 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.

11.02 Joint arrangements

- (a) The Council may establish joint arrangements with one or more Local Authorities and/or their executives to exercise functions which are not Executive Board 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) The Executive Board may establish joint arrangements with one or more local Authority to exercise functions which are Executive Board functions. Such arrangement may involve the appointment of joint committees with these/other local authorities.
- (c) Except as set out below, the Executive Board may only appoint Executive Board members to a joint committee and these members need not reflect the political composition of the local authority as a whole.
- (d) The Executive Board may appoint members to a joint Committee from outside the Executive Board in the following circumstances:
- (e) The joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Executive Board may appoint to the joint Committee any councillor who is a member for a ward which is wholly or partly contained within the area.
- (f) The political balance requirements do not apply to such appointments
- (g) 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.

11.03 Access to information

- (a) The Access to Information Rules in Part 4 of this Constitution apply.
- (b) If all the members of a joint committee are members of the executive in each of their participating authorities then its access to information regime is the same as that applied to the Executive.
- (c) 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.

11.04 Delegation to and from other Local Authorities

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

11.05 Contracting out

The Council may, for non executive functions and the Executive Board for executive functions, 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 12 – Officers

TERMINOLOGY

12.01 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)	Overall corporate management and operational responsibility (including overall management responsibility for all officers) as set out in the management structure contained in Part 7 of the Constitution. Ensuring appropriate professional advice to all parties in the decision making process. Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions. Representing the Council on partnership and external bodies (as required by statute or the Council).
Corporate Director (Internal Services)	As set out in the management structure contained in Part 7 of the Constitution.
Corporate Director (External Services)	As set out in the management structure contained in Part 7 of the Constitution.

- (c) **Head of Paid Service, Monitoring Officer and Chief Finance Officer.**

The Council will designate the following posts as shown:-

Post	Designation
Chief Executive	Head of Paid Service
Corporate Director (Internal Services)	Monitoring Officer
Head of Finance, Audit & Performance Management	Chief Finance Officer

Such posts will have the functions described in Article 12.02 – 12.04 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.

12.02 **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 he/she is a qualified accountant.

12.03 **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 or the Executive Board in relation to executive functions 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 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 executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers, are made publicly available as soon as possible.
- (g) **Advising whether Executive Board decisions are within the budget and policy framework.** The Monitoring Officer will advise whether

decisions of the Executive Board are in accordance with the budget and policy framework.

- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.
- (j) **Designation of Deputy.** The Monitoring Officer will designate an officer to deputise for him in his absence. He has presently designated the Head of Legal Services.

12.04 **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 or to the Executive Board in relation to Executive Board functions 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, probity and budget and policy framework issues 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.

12.05 **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.

12.06 **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.

12.07 **Employment**

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

Article 13 – Decision Making

13.01 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or which 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.

13.02 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.
- (f) consideration of all options available
- (g) only relevant matters to be taken into account
- (h) due weight to be given to all material considerations and
- (i) proper procedures shall be followed

13.03 Types of Decision

- (a) Decisions reserved to Full Council

Decisions relating to the functions listed in Article 4.02 will be made by the Full council and not delegated.

- (b) Key Decisions

A key decision means an Executive Board decision that is likely:

- i) to result in the local authority incurring expenditure which is, or the making of savings which are significant, having regard to the local authority's budget for the service or function to which the decision related.
- ii) To be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the area of the District of Rochford.

In accordance with section 38 of the 2000 Act, in determining the meaning of “significant” for the purposes of this paragraph regard shall be had to any guidance for the time being issued by the Secretary of State.

For the time being a Key decision in terms of expenditure or savings will be an executive decision which exceeds £50,000, excluding the following:-

- decisions relating to borrowing and investment within the Council’s treasury management strategy
 - decisions relating to the engagement and payment of staff, unless the Chief Executive determines otherwise
 - decision relating to the sale and purchase of land or property below £250,000
 - decisions about the acquisition of and payment for vehicles, plant, machinery, goods, supplies and services where these can be dealt with within budget and in accordance with existing Council policy, Contract Procedure Rules and Financial Regulations, and where the cost does not exceed £250,000
 - decisions about capital schemes where these are already contained within the approved capital programme, and can be dealt with in accordance with existing Council policy, contract standing orders and financial regulations, and where the contract does not exceed £250,000.
- iii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution

13.04 Decision making by the Full Council

Subject to Article 13.07 the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.05 Decision Making by the Executive Board

Subject to Article 13.07, the Executive Board will follow the Executive Board Procedure Rules set out in part 4 of the Constitution when considering any matter

13.06 Decision making by the Review Committee

The Review Committee will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

13.07 Decision making by other Committees and sub-Committees established by this Council

Subject to Article 13.07, 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.

13.07 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 14 – Finance, Contracts and Legal Matters

14.01 **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.

14.02 **Contracts**

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

14.03 **Legal proceedings**

The Corporate Director (Internal Services) 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 (Internal Services) considers such action is necessary to protect the Council's interests.

14.04 **Authentication of documents**

Where any document is necessary for any legal procedure or proceedings on behalf of the Council, it will be signed by the Corporate Director (Internal Services) 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.

Any contract with a value exceeding £30,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the Common Seal of the Council attested by at least one officer.

14.05 **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 (Internal Services). 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 (Internal Services) should be sealed. The affixing of the Common Seal will be attested by the Corporate Director (Internal Services) or some other person authorised by him/her.

Article 15 – Review and Revision of the Constitution

15.01 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.

15.02 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.

15.03 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 16 – Interpretation and Publication of the Constitution

16.01 Suspension of the Constitution

- (a) **Limit to suspension.** The Articles in Part 2 of this Constitution may not be suspended. The Rules in Part 4 may be suspended to the extent permitted within those Rules and the law. Other parts of the Constitution may be suspended in any lawful manner from time to time.
- (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.

16.02 Interpretation

The ruling of the Chairman of the 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.

16.03 Publication

- (a) The Corporate Director (Internal Services) 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 (Internal Services) 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 (Internal Services) will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

Schedule 1: Description of Executive Arrangements

The following parts of this Constitution constitute the Executive Board arrangements

1. Article 6 (Overview & Scrutiny Committees) and the Overview & Scrutiny Procedure Rules
2. Article 7 (Policy & Other Committees) and the Council Procedure Rules
3. Article 10 (Area Committees and Forums)
4. Article 11 (Joint Arrangements)
5. Article 13 (Decision Making)
6. Part 3 (Responsibility for Functions)

- 1.