

Part 2 – Articles of the Constitution

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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 Southend-on-Sea Borough 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. Provide a means of improving the delivery of services to the community;
6. Create a powerful and effective means of holding decision-makers to public account;
7. Ensure that no one will review or scrutinise a decision in which they were directly involved; and
8. Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions.

1.04 Review of the Constitution

The Council will monitor and evaluate the operation of the Constitution with the assistance of its Standards Committee if necessary.

Article 2 – Members of the Council

2.01 Composition and Eligibility

(a) Composition

The Council will comprise 51 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 Electoral Commission.

(b) Eligibility

Only registered voters of the Borough or those living or working there will be eligible to hold the office of Councillor. Any person who holds paid office or employment with the Council, or has been adjudged bankrupt or has made a composition with creditors or has in the last five years had passed on him a sentence of imprisonment of not less than three months, is disqualified from being a member of a local authority.

2.02 Election and Terms of Councillors

All out elections were held in June 2001 and one third of Councillors elected retired in May 2002, one third in May 2003 and one third in May 2004. New Councillors elected in May 2002 and at elections thereafter will serve for terms of 4 years. There will be no elections in the fourth year (May 2005, May 2009, etc). The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

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)** Represent their communities and bring their views into the Council's decision-making process, i.e. become the advocate of and for their communities;
- (iii)** Deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- (iv)** Balance different interests identified within the ward and represent the ward as a whole;
- (v)** Be involved in decision-making;
- (vi)** Be available to represent the Council on other bodies; and
- (vii)** 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 Procedure Rules in **Part 4(b)**.

2.04 Conduct

Councillors will at all times observe the Members’ Code of Conduct in **Part 5(a)** and the Protocol on Councillor / Officer Relations set out in **Part 5(d)**.

2.05 Allowances

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

Article 3 – Members of the Public and The Council

3.01 Rights of Members of the Public

Members of the public have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Procedure Rules in **Part 4(b)**:

(a) Voting and Petitions

Members of the public 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. This does not restrict members of the public from signing any other petition they wish to support.

(b) Information

Members of the public 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) Subject to matters which may be taken in confidential session, attend meetings of the Executive;
- (iii) Find out from the Forward Plan what key decisions will be taken by the Executive and when;
- (iv) Excluding confidential matters, see reports and background papers and any records of decisions made by the Council and the Executive; and
- (v) Inspect the Council's accounts, subject to certain restrictions, and make their views known to the external auditor.

(c) Participation

Members of the public have the right to participate in the Council's question time.

(d) Complaints

Members of the public have the right to complain to:

- (i) The Council itself under its complaints scheme
- (ii) The Local Government & Social Care Ombudsman after using the Council's own complaints scheme
- (iii) The Council's Monitoring Officer about a breach of the Member's Code of Conduct in **Part 5(a)**

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. They must not speak, sing or otherwise create a disturbance when attending any meeting of the Council, its Committees and the Executive.

Article 4 – The Full Council

4.01 The Role of the Council

- To act as a forum where all Councillors can meet on a regular basis to discuss and debate issues of importance to the Borough.
- To decide the Council's Policy Framework and Budget.
- To be responsible for regulatory, audit and other non-executive functions.
- To carry out the Local Choice functions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).
- To hold the Executive to account.

4.02 Functions of the Council and Terms of Reference

(1) Council Policy Framework

To approve and adopt the following plans and strategies which together make up the Council's Policy Framework:

- (a)** Those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended (and any further or amendment regulations which may be made from time to time under s.13 of the 2000 Act) to be adopted by the Council:
- Children & Young People's Plan
 - Sustainable Community Strategy
 - Crime and Disorder Reduction Strategy
 - Local Transport Plan
 - Plans and strategies which together comprise the Development Plan
 - Youth Justice Plan
 - Licensing Authority Policy Statement (Licensing Act 2003 and Gambling Act 2005)
 - Pay Policy Statement
- (b)** The following plans and strategies which the Council has adopted as part of the Policy Framework:
- Southend 2050 Ambitions, Themes & Outcomes and Five Year Road Map
 - Annual Report
 - The Official Feed and Food Controls Service Plan
 - Corporate Support, Finance and Information Technology Policies which have major financial or organisational implications
 - Highways Infrastructure Asset Management Plan
 - Health and Wellbeing Strategy
- (c)** Any plan or strategy required by law to be sent to a Minister of the Crown for approval.

(2) The Budget

To approve and adopt the Council's Budget

[The Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting fees and charges (save that fees and charges, other than parking charges, can be set by Chief Officers in accordance with paragraph 3.2(k) in **Part 3 Schedule 3**) the Council Tax Base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, investments, the control of capital expenditure and the setting of virement limits.]

(3) Other Functions of the Full Council

- (a)** Adopting and changing the Constitution (subject to **Part 2 – Article 15.02(b)**).
- (b)** Subject to the urgency procedure contained in the Access to Information Procedure Rules in **Part 4(b)**, making decisions about any matter in the discharge of an Executive function which is covered by the Policy Framework or the 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.
- (c)** Appointing the Mayor, electing a Leader for a four year term and approving the delegation of functions.
- (d)** Determining which committees, sub-committees, working parties, Boards, Panels etc. shall be established from time to time, the terms of reference of each body, the number of members (voting and non-voting) that each consists of and to make the necessary appointments to the bodies, including Chair and Vice Chair provided that Scrutiny Committees can appoint Working Parties / Panels in accordance with Article 6 of **Part 2**.
- (e)** Appointing representatives to outside bodies (unless the appointment is an Executive function or has been delegated by the Council).
- (f)** Adopting a scheme for Councillors' allowances under **Article 2.05**.
- (g)** Changing the name of the area, conferring the title of Honorary Alderman, Honorary Alderwoman or Freedom of the Borough.
- (h)** Confirming the appointment of the Head of Paid Service and designating the Monitoring Officer, Chief Finance Officer and Proper Officers. (The appointment of Chief Officers and Deputy Chief Officers and also interviewing and recommending a person for the post of Head of Paid Service is delegated to the Appointments and Disciplinary Committee – subject to the Officer Employment Procedure Rules in **Part 4(h)**).
- (i)** Taking the decision to dismiss the Head of Paid Service, Chief Finance Officer or Monitoring Officer in accordance with the Officer Employment Procedure Rules in **Part 4(h)**.
- (j)** Making, amending, revoking, re-enacting or enforcing byelaws and promoting or opposing the making of local legislation or personal Bills.
- (k)** Adopting a Code of Conduct for Councillors and Co-opted Members.

- (l) All local choice functions set out in **Part 3** of this Constitution which the Council decides should be undertaken by itself rather than the Executive and not delegated to any of its committees or sub-committees or officers.
- (m) Taking decisions in respect of functions which are not the responsibility of the Executive and which have not been delegated by the Council to committees, sub-committees or officers; (**Note:** In accordance with S101(4) of the Local Government Act 1972, the arrangements for the discharge of non-executive functions by Committees, Sub-Committees or officers shall not prevent the Council from exercising those functions).
- (n) In relation to Parishes, the following powers:
 - (i) to dissolve small Parish Councils
 - (ii) to make orders for grouping Parishes, dissolving groups and separating Parishes from groups
 - (iii) to make temporary appointments to Parish Councils
 - (iv) to change the name of the District or a Parish
- (o) The submission of proposals to the Secretary of State for an Order under Section 10 (pilot schemes for local elections in England and Wales) Representation of the People Act 2000.
- (p) Making compulsory purchase orders.
- (q) Discharging all licensing functions and such other matters which must be reserved to the Council as specified in the Licensing Act 2003 and the Gambling Act 2005 or any Regulations published in relation to either Act or any other legislation or any statute or Regulations amending consolidating or replacing them.
- (r) To provide a means whereby Councillors may ask questions of matters relevant to the Council's purview and to bring forward motions for debate.
- (s) To receive reports from Committees on matters which have been delegated to them and providing opportunity for Councillors to ask questions thereon.
- (t) To receive and confirm or otherwise the recommendation of Committees on non-Executive functions not within their delegation or which a committee has referred to the Council for decision, to enable Councillors to ask questions, propose amendments, or to pass such resolutions or resolutions thereon may be deemed appropriate.
- (u) To approve any application to the Secretary of State in respect of any 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.]
- (v) All other matters which, by law, must be reserved to the decision of the Council as a whole.

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(a)**.

Article 5 – Chairing the Council

Ceremonial Role

The Mayor is the ceremonial head of the Council and its representative at civic and social occasions. The role is separate from that of the Leader of the Council who speaks for the Council on all aspects of policy and Executive business.

Chairing the Council Meeting

The Mayor (or in their absence, the Deputy Mayor) will be the person presiding over Council meetings.

The Mayor will be elected by the Council annually from among the Councillors and will receive regular briefings by the Chief Executive, and Leader on current issues. The Mayor 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 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 Councillors who are not on the Executive or the Chair of a Committee are able to hold the Executive and committee chairs to account;
4. To promote public involvement in the Council's activities;
5. To attend such civic and ceremonial functions as the Council and they determine appropriate; and
6. To decide whether or not to agree that a key decision is required at short notice as a matter of urgency and cannot reasonably be deferred. (The Chair of the relevant Scrutiny Committee also has this power). See paragraph 16 of the Access to Information Procedure Rules in **Part 4(b)** of the Constitution.

Article 6 – Scrutiny Committees

6.01 Terms of Reference

The Council will appoint the following scrutiny committees to discharge the functions conferred by section 21 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table.

Committee	Scope
Policy & Resources Scrutiny Committee	Full details are set out in Part 3, Schedule 2
People Scrutiny Committee	Full details are set out in Part 3, Schedule 2
Place Scrutiny Committee	Full details are set out in Part 3, Schedule 2

6.02 General Role

Within their terms of reference, 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 the Executive 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 the Cabinet; and
 - key decisions made but not yet implemented by officers under delegated powers.
- (v) Deal with best value reviews jointly with the Executive.

6.03 Specific Functions

(a) Policy Development and Review

Scrutiny committees may:

- (i) assist and advise the Council and the Executive 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 and / or committees and chief officers about their views on issues and proposals affecting Southend-on-Sea;
- (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; and
- (vi) initiate public inquiries into matters of concern.

(b) Scrutiny

Scrutiny committees may:

- (i) review and scrutinise the decisions made by and performance of the Executive and/or 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 including budgets;
- (iii) question members of the Executive and / or committees and the Chief Executive, Deputy Chief Executives, Strategic Directors and Directors 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 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 overview and scrutiny committee and local people about their activities and performance;
- (vi) question and gather evidence from any person (with their consent);
- (vii) undertake Select Committee style inquiry into aspects of Council policy and performance or issues of concern to the Borough (the Council expects this normally to be limited to a maximum of 2 per annum);
- (viii) establish Working Parties / Panels on the basis of political proportionality but without delegated powers to undertake elements of the inquiries referred to in (vii) above and small-scale scrutiny work within parameters set by the Scrutiny Committee; and
- (ix) in the case of the People Scrutiny Committee, appoint members and substitute(s) to Joint Health Scrutiny Committees.
- (x) in case of the People Scrutiny Committee, consider referrals made to it by Healthwatch Southend.

(c) The key functions of all the Scrutiny Committees is to hold the Executive to account for the discharge of functions in the following principal ways:

- (i) Scrutinising Key Decisions which the Executive in planning to take, as set out in the Forward Plan or of which proper notice is given;

- (ii) Scrutinising Cabinet decisions and Key Decisions made by Officers after they are made but before they are implemented, under the “Call-in” arrangements;
- (iii) Scrutinising Executive decisions after they have been implemented, as part of a wider policy review.

(d) Finance

Scrutiny committees will exercise overall responsibility for the finances made available to them.

6.04 Proceedings of Scrutiny Committees

Scrutiny committees will conduct their proceedings in accordance with the Scrutiny Procedure Rules set out in **Part 4(e)** including, where necessary, consulting other committees, stakeholders or community groups.

Article 7 – The Executive

The Role of the Executive

7.01 Role

The Executive will carry out all of the local authority's functions which are not the responsibility of the Council, whether by law or under this Constitution. The Cabinet will take all decisions collectively; no individual Cabinet Member shall have any executive powers.

The Executive, in exercising these functions will do so within the Policy Framework and Budget set by the Council in accordance with these arrangements.

The Executive also has a key role in proposing the Budget and Policy Framework to the Council.

The Executive and its members will lead the Community Planning Process and the drive for Best Value, lead the preparation of the Council's Policies and Budget, take in year decisions on resources and priorities, and be the focus for forming partnerships with other local public, private and voluntary and community sector organisations to address local needs.

The Executive will also respond to any recommendations and reports from the Scrutiny Committees, Regulatory and other Committees (including the Audit Committee) Advisory Forums and Panels, Working Parties and the Standards Committee.

7.02 Form and Composition

- (a) The Executive will consist of the Leader appointed by the Council together with up to nine other Councillors including a Deputy Leader appointed to the Cabinet by the Leader.
- (b) The Leader may reduce or increase (up to a maximum of 9) the number of such other Cabinet Members at some future date and also amend the responsibilities of the Cabinet Members from those set out in **Part 3 – Schedule 1(a)** – see 7.04(4) below.
- (c) The Leader will also appoint three Cabinet Members to the Cabinet Committee (see **Part 3 – Schedule 2** paragraph 2.6(b))
- (d) The Leader's decisions re (a) (b) and (c) are at their discretion and cannot be called in under the Scrutiny Procedure Rules.

7.03 Leader

The Leader will be a Councillor elected for a term of four years (subject to (a) – (d) below) to the position of Leader by the Council and they shall not be the Mayor or Deputy Mayor or a member of a Scrutiny Committee. The Leader shall appoint one of the members of the Executive to be their Deputy Leader for the same term. The Leader shall notify the Chief Executive of this appointment. Notice of the appointment is made public within two working days, whereupon the appointment becomes effective.

The Leader shall hold office until:

- (a) they resign from the office; or
- (b) they are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they are no longer a Councillor; or

- (d) they are removed from office by a resolution of the Council. If the Council passes such a resolution, a new Leader is to be elected:
 - (i) at the meeting at which the Leader is removed from office; or
 - (ii) at a subsequent meeting.

In the event that the Leader no longer holds office as described above, the Deputy Leader will carry out the role and duties of the Leader until the new Leader is elected by the Council.

The Deputy Leader, unless they resign as Deputy Leader or is suspended from being a Councillor (although they may resume office at the end of the period of suspension) or ceases to be a member of the Council or is removed by the Leader if they think fit, is to hold office until the end of the term of office of the Leader.

Note: There is no limit on the number of terms that the Leader or Deputy Leader may serve.

7.04 Other Cabinet Members

- (1) Only Councillors may be appointed to the Executive. There may be no co-optees and no deputies or substitutes for Cabinet Members except in accordance with the Standing Order 31. Neither the Mayor nor Deputy Mayor of the Council shall be appointed to the Executive¹ and members of the Executive shall not be members of a Scrutiny Committee.
- (2) The Leader appoints the other Cabinet Members and notifies the Chief Executive of their appointments. Notice of the appointment is made public within two working days, whereupon the appointment becomes effective.
- (3) Such other Cabinet Members shall hold office until:
 - (a) they resign from office; or
 - (b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
 - (c) they are no longer Councillors; or
 - (d) the conclusion of the next Annual Meeting at the end of the municipal year, save that they may be removed from office at an earlier date, either individually or collectively, by the Leader who must give written notice to the Chief Executive. The removal will take effect two working days after the receipt of the notice by the Chief Executive – who will promptly notify all Councillors.
- (4) The Leader may at any time amend the responsibilities of the Cabinet Members (including the Deputy Leader) from those set out in **Part 3, Schedule 1(a)** and will notify the Chief Executive – who will promptly notify all Councillors.

7.05 Proceedings of the Executive

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in **Part 4(d)**.

¹ S.11(7) of the 2000 Act

7.06 Functions of the Executive and Terms of Reference

- (a) To carry out **all** the Council's functions except for those functions specified in **Part 2 – Article 4** and **Part 3** that are reserved to the Council and that are undertaken by full Council or delegated by the Council to Committees, sub-committees or officers.

In exercising these functions, the Cabinet must do so within the Policy Framework and Budget set by the Council and all decisions of the Cabinet will be subject to the call-in arrangements set out in the Constitution.

- (b) To propose the Budget and Policy Framework to the Council.

Article 8 – Regulatory and Other Committees

8.01 Regulatory and Other Committees

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

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) specify those functions which are not to be the responsibility of the Executive. Some of these are non Executive functions are reserved to full Council in Article 4. The remaining non Executive functions are delegated to committees or officers in **Part 3** of this Constitution.

Article 9 – The Standards Committee

9.01 Standards Committee

The Council will establish a Standards Committee and a Standards Hearing Sub-Committee.

The Constitution and Terms of Reference of the Standards Committee and the Sub-Committee are set out in **Part 2, Schedule 3** of the Constitution.

9.02 Composition

Following the changes in the Localism Act 2011, the Standards Committee is now an ordinary committee of the Council appointed under S.101 of the Local Government Act 1972.

The membership of the Standards Committee is set out in **Part 2, Schedule 3** of the Constitution.

9.03 Role and Function

The Standards Committee will have the following roles and functions:

- (a) To promote and maintain high ethical standards of conduct for elected Councillors and Co-opted Members.
- (b) To help elected Councillors and Co-opted Members to observe the Members' Code of Conduct in **Part 5a**.
- (c) To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes / protocols covering matters such as planning and Councillor / Officer relations.
- (d) To monitor the effectiveness of the Members' Code of Conduct.
- (e) To train or arrange training for elected Councillors and Co-opted Members on matters relating to the Members' Code of Conduct.
- (f) To deal with complaints that elected Councillors and Co-opted Members have breached the Members' Code of Conduct and in connection with this function:
 - (i) To develop and adopt:
 - Assessment Criteria for dealing with complaints;
 - Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
 - Arrangements for dealing with complaints and publicising the arrangements;
 - Procedures for dealing with local investigations; and
 - Such other provisions and procedures as may be required.
 - (ii) To establish and maintain a Hearing Sub-Committee.
- (g) To grant dispensations under S.33 Localism Act 2011.

- (h) To conduct Hearings and make determinations in respect of complaints that elected Councillors and Co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory and Constitutional requirements and in connection with this function:
 - (i) To develop and adopt procedures for dealing with such Hearings; and
 - (ii) To establish and maintain a **Hearing Sub-Committee** with its own terms of reference.
- (i) To undertake the functions set out above in respect of Leigh-on-Sea Town Council.

Note: The procedures for dealing with Complaints against Councillors and Co-opted Members alleging a breach of the Members' Code of Conduct are set out **Part 4(i)** of the Constitution.

Article 10 – Forums and Working Parties

10.01 Form, Composition and Function

The Council will appoint a series of Working Parties, Forums, Panel and Bodies as set out in **Part 3, Schedule 2**.

10.02 Conflicts of Interest

See the Code of Conduct in **Part 5(a)**.

10.03 Cabinet Members on Working Parties and Forums

A member of the Executive may serve on a Working Party or Forum if eligible to do so as a Councillor.

Article 11 – Joint Arrangements

11.01 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local or public authorities and / or their Executives to exercise functions which are not Executive functions. Such arrangements may involve the appointment of a joint committee with these other local authorities.
- (b) The Executive may establish joint arrangements with one or more local or public authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Except as set out below, the Executive may only appoint Cabinet Members to a joint committee and those members need not reflect the political composition of the local authority as a whole.
- (d) The Executive may appoint members to a joint committee from outside the Executive where 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 may appoint to the joint committee any Councillor who is a member for an electoral ward which is wholly or partly contained within the area.

The political balance requirements do not apply to such appointments.

- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in **Part 3, Schedule 1(b)**.

11.02 Access to Information

- (a) The Access to Information Procedure Rules in **Part 4(b)** apply.
- (b) If all the members of a joint committee are members of the Executive in each of the 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.

11.03 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 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.

11.04 Contracting Out

The Executive 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 12 – Officers

12.01 Management Structure

(a) **General**

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

(b) **Head of Paid Service, Deputy Chief Executives, Strategic Directors and Directors**

The Senior Management Structure of the Council and the duties of the Officers are set out in **Part 7**.

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

The Council has designated the following posts as shown:-

Post	Designation
Chief Executive	Head of Paid Service
Strategic Director (Legal & Democratic Services)	Monitoring Officer
Strategic Director (Finance & Resources)	Chief Finance Officer (S.151 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 a qualified accountant.

12.03 Functions of the Monitoring Officer

The list of functions below reflects the statutory duties and powers of Monitoring Officers and those set out in Chapters 8 and 9 of the DETR Guidance.

(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 Councillors, staff and the public. They will advise the Council from time to time on necessary or desirable changes.

(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 to the Executive in relation to an Executive function if they consider that any proposal, decision or omission would give rise to unlawfulness. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered. They will also report where the Local Government & Social Care Ombudsman has carried out an investigation.

(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 and its Sub-Committee. The Monitoring Officer will also carry out the responsibilities assigned under the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007, The Localism Act 2011 and Regulations made thereunder in respect of complaints against Councillors and Co-opted Members.

(d) 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.

(e) Advising whether Executive Decisions are within the Budget and Policy Framework

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

(f) 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.

(g) Restrictions on Posts

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

(h) The Monitoring Officer will contribute to the corporate management of the Council in particular through the provision of legal advice.

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 in relation to an Executive function and the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

(b) 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, subject to the rules of the Council.

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 the opinion of those officers reasonably sufficient to allow their statutory duties to be performed.

12.06 Conduct

Officers will comply with the Employee Code of Conduct in **Part 5(c)** and the Protocol on Councillor / Officer Relations set out in **Part 5(d)**.

12.07 Employment

The recruitment, selection and dismissal of officers will comply with the Officer Employment Procedure Rules set out in **Part 4(h)**.

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 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 Principles of Decision Making

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

- (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 (see below for further details);
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes; and
- (f) reasoned decision making on the basis of options considered.

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
 - (i) A key decision which must be included in the Forward Plan is an Executive decision which is likely:
 - (a) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates (the Council has decided that any decision involving expenditure in excess of £250,000, excluding any decisions relating to investment of Council monies as part of Treasury Management procedures, will be a key decision); or
 - (b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in Southend-on-Sea.
 - (ii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules in **Part 4(d)** and the Access to Information Procedure Rules set out in **Part 4(b)**.

13.04 Decision Making by the Full Council

Subject to Article 13.08 the Council meeting will follow the Council Procedures Rules set out in **Part 4(a)** when considering any matter.

13.05 Decision Making by the Executive

Subject to Article 13.08, the Executive will follow the Executive Procedures Rules set out in **Part 4(d)** when considering any matter.

13.06 Decision Making by Scrutiny Committees

Scrutiny committees will follow the Scrutiny Procedures Rules set out in **Part 4(e)** of this Constitution when considering any matter.

13.07 Decision Making by Other Committees and Sub-Committees Established by the Council

Subject to Article 13.08, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in **Part 4(a)** of this Constitution as apply to them.

13.08 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 and Contracts

14.01 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in **Part 4(f)** of this Constitution.

14.02 Contracts

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

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.

Protocol for Monitoring and Review of Constitution by Monitoring Officer

The Monitoring Officer will keep under review the strengths and weaknesses of the Constitution adopted by the Council, and will 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 Councillor and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with them by Councillors, 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.

15.02 Changes to the Constitution

(a) Approval

Subject to **(b)** below, changes to the Constitution will only be approved by the full Council on a report from the Monitoring Officer.

- (b)** The Chief Executive in consultation with the Monitoring Officer and the Group Leaders shall have the power to make minor amendments to the Constitution to correct errors or to comply with any legal requirement or to reflect changes in the Council's structure or to make minor adjustments to the duties under the portfolios in **Part 3, Schedule 1(a)**.

(c) 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 – Suspension, Interpretation and Publication of the Constitution

16.01 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

- In respect of business at Council meetings the Council Procedure Rules set out in **Part 4(a)** – except those of statutory effect, may be suspended in accordance with Article 16.01(b).
- The Executive or any of the Council's committees with delegated authority for contracts or a relevant officer (using S.O.46) may waive the rules for specific contracts as provided for in the Contracts Procedure Rules in **Part 4(g)**.

16.02 Interpretation

The ruling of the Mayor 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 Monitoring Officer will provide a copy of this Constitution to each Councillor upon delivery to them of that Councillors declaration of acceptance of office on first being elected to the Council.
- (b)** The Monitoring Officer will ensure that the Constitution is 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 Monitoring Officer will ensure that the summary of the Constitution (namely **Part 1** of the Constitution) is made widely available within the area and is updated as necessary.

Schedule 1: Description of Executive Arrangements

The parts of this Constitution which constitute the Executive arrangements are:

1. Article 6 (Scrutiny committees and the Scrutiny Procedure Rules in **Part 4(e)**)
2. Article 7 (The Executive and the Executive Procedure Rules in **Part 4(d)**)
3. Article 10 (Working Parties and Forums)
4. Article 11 (Joint Arrangements see also **Part 3, Schedule 1(a)**)
5. Article 13 (Decision making and the Access to Information Procedure Rules in **Part 4(b)**)
6. Part 3 (Responsibility for Functions)