

# West Berkshire Council Constitution

## Part 2

## Articles of the Constitution

### Document Control

<b>Document Ref:</b>	WB/P&C/MF/2008-11	<b>Date Created:</b>	May 2007
<b>Version:</b>	20	<b>Date Modified:</b>	September 2017
<b>Revision due</b>			
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<b>Owning Service</b>	Strategic Support		

### Change History

Version	Date	Description	Change ID
1	May 2008	Paragraph 2.6.5 updated	
2	May 2011	Paragraphs 2.13, 2.2.3, 2.2.4, 2.3.4, 2.5.5, 2.6.2, 2.6.3, 2.6.5, 2.7.1, 2.7.2, new 2.7.3, 2.8.2, 2.8.5, 2.9.2, 2.13.3	
3	April 2012	Changes to reflect new Senior Management Structure and impact of Localism Act	
4	May 2012	Paragraph 2.6.5 updated	
5	May 2013	Paragraph 2.6.5 updated with new portfolios	
6	July 2013	Reference to Health & Wellbeing Board added (Paragraph 2.6.9)	
7	Nov 2013	Paragraph 2.6.5 updated	



Version	Date	Description	Change ID
7.1	Nov 2013	Local Development Framework renamed Development Plan	
8	March 2014	Minor corrections	2.1.3, 2.1.6, 2.2.3, 2.2.5, 2.3.1, 2.3.4, 2.3.8, 2.4.1, 2.5.1, 2.5.2, 2.5.5, 2.6.1, 2.6.3, 2.6.4, 2.7.2, 2.7.3, 2.7.4, 2.7.8, 2.7.9, 2.7.10, 2.7.11, 2.8.1, 2.8.3, 2.8.4, 2.8.7, 2.10.2, 2.11.3(b), 2.11.3 (d), 2.11.4, 2.12.4, 2.12.5, 2.13.2, 2.13.3, 2.14.3
9	May 2014	Revision to the numbers on Personnel;, Governance and Audit and Licensing Committee as well as the Overview and Scrutiny Management Commission following annual Council	2.6.5, 2.7.1, 2.8.2, 2.8.4 and 2.8.5
10	Jan 2015	Paragraph 2.6.5 updated (Executive Portfolios) – resignation of member from Executive	2.6.5
11	February 2015	2.4.1, 2.4.3 (e), 2.5, 2.5.5, 2.6, 2.6.3, 2.6.4, 2.6.5, 2.6.7, 2.7, 2.7.1, 2.7.10, 2.8, 2.8.1, 2.8.2,2.8.3, 2.8.6, 2.9, 2.11, 2,11.5, 2.12, 2.12.3, 2.12.4, 2.13	
12	May 2015	2.6.5 amended following Council on 19 May 2015. 2.9.3 in accordance with The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.	
13	July 2015	Changes arising from the merge of the Governance and Audit and Standards Committees	2.2.5, 2.8.4, 2.8.5 and 2.8.6 and delete 2.9
14	February 2016	Changes in relation to Forward Plan legislation Include reference to the deputy leader standing down when the leader does	2.2.3 2.6.4
15	May 2016	Changes to Executive Portfolios following Annual Council meeting on 19 <sup>th</sup> May 2016. Changes to reflect introduction of Select Committees	2.2.3, 2.3.4, 2.4.3, 2.6.5, 2.7.1, 2.7.2, 2.7.9, 2.7.11
16	August 2016	Changes to the Executive Portfolios	2.6.5
17	February 2017	Correction of typographical errors, job titles and alignment with wording associated with the Governance and Ethics Committee in other parts of the Council	2.2.3, 2.2.4, 2.2.5,2.3.1, 2.5.3, 2.8.4
18	May 2017	Update the Budget Framework to make reference to the Property Management Strategy Changes to the Executive Portfolios Update the number of members on OSMC following the implementation of the new Scrutiny Arrangements	2.5.3 2.6.5 2.7
19	July 2017	To reflect the increase in the number of members on Licensing Sub Committees from three to four	2.8.3
20	September 2017	To reflect changes to the Appeals Panel	2.5.5 and 2.8.7
21	December 2018	To reflect the changes made at the December 2018 Council meeting	2.8.7
22	January 2019	Changes required to Licensing Sub-Committees	2.8.3
23	May 2019	Changes to Executive Portfolios following Annual Council meeting on 21 <sup>st</sup> May 2019 and to reflect that Legal and Strategic Support Services were amalgamated	2.6.5

Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:

<http://www.opsi.gov.uk/legislation/uk>

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## **2.1 Article 1 – The Constitution**

### **2.1.1 Powers of the Council**

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

### **2.1.2 The Constitution**

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

### **2.1.3 Purpose of the Constitution**

The purpose of the Constitution is to put in place a structure for decision-making to help the Council realise its corporate aims, objectives and priorities in an efficient and effective manner whilst meeting its legal duties. In particular the Constitution seeks to help the Council meet its stated corporate priorities and principles.

### **2.1.4 Decision-making**

The Constitution provides the means to focus the Council's decision-making to ensure that it:

- reflects closely the needs and aspirations of local communities, towns and villages;
- encourages community involvement;
- helps Councillors represent their constituents effectively;
- enables decisions to be taken efficiently and effectively;
- creates a powerful and effective means of holding decision-makers to public account;
- ensures that no one will review or scrutinise a decision in which they were directly involved;
- is clear who is accountable for making specific decisions;
- promotes community leadership.

### **2.1.5 Interacting with the Local Community**

The Council sees its Constitution as more than a series of procedures and rules. It will play a major part in demonstrating how all parts of the Council intend to engage actively with the local community. It will bring about more efficient and effective decision-making, which in turn will ensure that the Council is able to realise its vision:

*“Keeping West Berkshire a great place in which to live, learn, work and do business in”.*

### **2.1.6 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 believes most closely reflects the objectives and values stated above (see paragraph 2.1.4 Decision-Making).

The Council will monitor and evaluate the operation of the Constitution as set out in Article 12.

## **2.2 Article 2 – Citizens and the Council**

### **2.2.1 Citizens' Rights**

Citizens have certain rights as defined below. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 8 of this Constitution.

### **2.2.2 Voting and Petitions**

Citizens on the electoral roll for the District have the right to vote and sign a petition to request a referendum for an elected mayor for the Council (subject to the Regulation on time limits).

### **2.2.3 Definition of Citizens' Rights**

Citizens have the right to:

- attend meetings of the Council, its Committees and Sub-Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private (see Rule 8.10 – Exclusion of Access by the Public to Meetings);
- attend meetings of the Executive (and any Committee which it may appoint) except where confidential or exempt information is disclosed and the meeting is therefore held in private;
- find out at least 28 days in advance of either any key decision to be taken by the Executive, or any decision / report where it is intended that the public and press will be excluded from a meeting of the Executive, or a report to the Executive will be considered as being “Not for Publication”. In such circumstances individuals will be able to express their views on why they believe such decisions should be taken in a meeting open to the public, and the Executive will be required to respond to these representations and explain why it either supports or rejects the request. This is by way of “notices” made available on the Council and Democracy pages of the Council’s website;
- find out from its Work Programme what items the Overview and Scrutiny Management Commission and its Sub-Committees are to consider;
- see reports, background papers and any records of decisions made by the Council, its Committees and Sub-Committees except where this information is deemed to be exempt;
- see reports, background papers and any records of decisions made by the Executive; except where this information is deemed to be exempt and
- inspect the Council’s accounts and make their views known to the external auditor.

### **2.2.4 Participation**

Citizens have the right to:

- submit petitions to the Council as set out in Part 13 Codes and Protocols – Appendix C;



- submit written questions to the Council, Executive, its Committees and Sub-Committees, provided that this is done in accordance with the rules of procedure or approved protocol (see relevant sections in Parts 4, 5 and 7);
- ask no more than one supplementary question in respect of each question at the meeting provided it is relevant to the original question;
- actively contribute to the work of the Overview and Scrutiny Management Commission or its Sub-Committee(s) by providing written or verbal evidence when so invited;
- speak at Area Planning Committees and District Planning Committee in respect of planning applications (Rule 7.13 (Planning Applications) refers);
- speak at Licensing Sub-Committees in respect of licensing applications for approval and consent (Rule 7.14 (Licensing Applications) refers).

### **2.2.5 Complaints**

Citizens have the right to complain to:

- the Council itself under its Corporate Complaints Procedure;
- the Local Government Ombudsman after using the Council's own Customer Comments and Complaints Procedure;
- the Governance and Ethics Committee about any breach of the Members' Code of Conduct.

### **2.2.6 Citizens' Responsibilities**

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

## **2.3 Article 3 – Members of the Council**

(Part 4 also refers)

### **2.3.1 Composition**

The Council comprises 43 Councillors, also referred to in this Constitution as Members and Ward Members. 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 Electoral Commission.

### **2.3.2 Eligibility**

Only registered voters of the District or those living or working there, or having an interest in land in the District, will be eligible to hold the office of Councillor.

### **2.3.3 Election and Terms of Councillors**

The regular election of Councillors will normally be held on the first Thursday in May every four years beginning in 2003. 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.

### **2.3.4 Key Roles**

All Councillors should:

- collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
- individually and collectively advise the Council and its Overview and Scrutiny Management Commission and its Sub-Committees on issues of policy;
- represent their communities and bring their views into the Council's decision-making processes, thereby acting as the advocate of and for their communities;
- contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
- deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances in a fair and impartial manner;
- balance different interests identified within the Ward and represent the Ward as a whole;
- be involved in decision-making;
- be available to represent the Council on other bodies; and
- maintain the highest standards of conduct and ethics.

### **2.3.5 Rights and Duties**

All 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;

(NB: Documents dealing with individuals or other confidential matters may not be available.)

- not make public, information which is confidential or exempt without the consent of the Council or divulge information given in confidence by any person or body to anyone other than a Councillor or Officer entitled to know it.

For these purposes, the terms “confidential” and “exempt” information are defined in the Access by the Public to Information Rules of Procedure in Part 8 of this Constitution.

### **2.3.6 Conduct**

Councillors will at all times observe the Code of Conduct and the Protocol on Member/Officer Relations set out in Part 13 of this Constitution. Co-opted Members of Committees will be guided by the principles in the Code of Conduct.

### **2.3.7 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members’ Allowances Scheme set out in Part 14 of this Constitution.

### **2.3.8 Confidentiality – Non-Disclosure of Reports**

Reports to Committees, Sub-Committees, Panels or Task Groups which are "not for publication", in accordance with the statutory provisions on the grounds that they contain confidential or exempt information, shall be treated as confidential and shall not be disclosed by Councillors or Officers of the Council unless the Committee, Sub-Committee, Panel or Task Group decides otherwise.

After the meeting of the Committee, Sub-Committee, Panel or Task Group the information shall continue to be treated as confidential except in so far as it ceases to be confidential by virtue of the statutory provisions or its inclusion in the Minutes of the meeting which are made available for public inspection.

### **2.3.9 Constitution to be given to Members**

As soon as possible following the declaration of acceptance of office, each Member shall be given access to a copy of the Constitution. Amendments to the Constitution shall be made available to each Member as soon as possible after their approval.

## **2.4 Article 4 - Decision-Making**

### **2.4.1 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 decision or decisions relating to particular areas or functions. This record is set out in Part 3 (Scheme of Delegation) of this Constitution.

### **2.4.2 Principles of Decision-Making**

Any decisions taken must be in accordance with the terms of this Constitution.

Under the Constitution, decisions will be taken by the full Council, the Executive (both collectively and by individual Members of the Executive), Committees, Sub-Committees and by Officers.

Whichever body or individual is responsible for taking a decision, the decision should be taken, as far as possible, in accordance with the following principles:

- there should be a presumption in favour of decision-making being open and transparent, with members of the public being afforded effective access to relevant information and the processes by which decisions are taken;
- due consultation should take place with those likely to be affected by a decision. So far as practicable, decision-taking should be planned in advance and the public given due notification of forthcoming decisions;
- where a decision is likely to have wide-ranging or significant impact on the community, additional time and emphasis should be given to consultation and members of the public actively encouraged to contribute their views;
- decisions must be taken with regard to all relevant considerations and ignoring all irrelevant matters;
- decisions should be taken on the basis of the Council's corporate priorities and principles and have regard to any approved policies or procedures of the Council;
- appropriate professional advice should be obtained from suitably-qualified Officers of the Local Authority;
- decisions must be taken with regard to proportionality – the action must therefore be proportionate to the desired outcome;
- decisions must be taken with regard to any relevant statutory requirements and with respect for human rights;
- any decisions taken must be formally recorded in accordance with the requirements of this Constitution. Where the decision is taken by the Executive, or a Member of the Executive, the formal record should state what alternative options were considered and the reason for the decision that was taken.

In some cases (e.g. where urgent action is necessary, or confidential matters are under discussion) it may not be practicable to fully comply with

all of these principles, but decision-makers should satisfy themselves that they have been complied with so far as reasonably practicable in the circumstances. Decision-makers may be held to account for any failure to comply with these principles.

### **2.4.3 Types of Decision**

#### **(a) Decisions Reserved to Full Council**

Decisions relating to the functions listed in Rule 2.5.2 (Policy Framework) will be made by the full Council and not delegated.

#### **(b) Key Decisions**

A 'key decision' means an Executive decision which is likely either:

- 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 relates: or
- to be significant in terms of its effects on communities living or working in an area comprising two or more Wards within the District.

Key decisions may only be taken in accordance with the requirements set out in Part 5 (Executive Rules of Procedure) of this Constitution.

#### **(c) Decision-making by the Full Council**

Subject to (h) below, the Council meeting will follow the Council Rules of Procedures set out in Part 4 (Council Rules of Procedure) of this Constitution when considering any matter.

#### **(d) Decision-making by the Executive**

Subject to (h) below, the Executive will follow the Executive Rules of Procedure set out in Part 5 of this Constitution when considering any matter.

#### **(e) Decision-making by an Individual Executive Member**

Subject to (h) below, an individual Executive Member will follow the Executive Rules of Procedure and associated Individual Decision Protocol (Appendix B to Part 13 (Codes and Protocols)) of the Constitution when considering any matter.

#### **(f) Decision-making by the Overview and Scrutiny Management Commission**

The Overview and Scrutiny Management Commission and its associated Sub Committee(s) will follow the Overview and Scrutiny Rules of Procedure set out in Part 6 of this Constitution when considering any matter.

#### **(g) Decision-making by other Committees and Sub-Committees established by the Council**

Subject to (h) below, other Council Committees and Sub-Committees will follow the Rules of Procedure as set out in Part 7 of this Constitution.

#### **(h) 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.

## **2.5 Article 5 – The Full Council**

(Part 4 (Council Rules of Procedure) also refers)

### **2.5.1 Role and Function of the Chairman**

The Chairman and Vice-Chairman will be elected by the Council on an annual basis. The Chairman is the civic head of West Berkshire and will represent the Council at official engagements arranged by the Local Authority or to which the Local Authority is invited. The Chairman (or in their absence, the Vice-Chairman) has precedence within the District but not prejudicially as to affect the monarch's Royal Prerogative. The Chairman therefore takes precedence over the Town Mayors of Newbury, Thatcham and Hungerford. In addition, the Chairman also has the following responsibilities:

- to uphold and promote the purposes of the Constitution, and to interpret the Constitution where necessary;
- to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the interests of the community and the rights of Councillors;
- to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not on the Executive are able to hold the Executive to account;
- to promote public involvement in the Council's activities;
- to act in a neutral manner on matters that affect the Council;
- to attend such civic and ceremonial functions as the Council and the Chairman determines appropriate;
  - to ensure that good working relations are maintained between Councillors and Officers.

### **2.5.2 Policy Framework**

The Policy Framework means the following plans and strategies, and any others which are of a similar nature:

- Those required to be included by Regulations made under the Local Government Act 2000:
- Council Strategy
- Local Transport Plan
- Licensing Policy
- Gambling Policy
- Plans and strategies which together comprise the Local Development Plan
- Health and Wellbeing Strategy
- Statutory Pay Policy Statement
- Property Investment Strategy

- Those other plans and strategies requiring approval and not included in the approved Policy Framework will be delegated to the Council's Executive:

### **2.5.3 Budget Framework**

The Council's Budget framework is as follows:

- Revenue Budget;
- Capital Programme;
- Capital Strategy;
- Medium Term Financial Strategy;
- Investment and Borrowing Limits (including the Asset Management Strategy and the Property Investment Strategy).

### **2.5.4 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.

### **2.5.5 Functions of the Full Council**

Only the Full Council will exercise the following functions:

- adopting and changing the Constitution;
- approving the Budget and Policy Framework;
- subject to the Urgency Procedure contained in the Access by the Public to Information Rules of Procedure in Part 8 of this Constitution, making decisions about any matter in the discharge of an Executive function which is covered by the Budget and Policy Framework where the decision-maker is minded to make it in a manner which would be contrary to the Framework or contrary to/or not wholly in accordance with the budget;
- appointing the Strong Executive Leader;
- agreeing and/or amending the terms of reference for Committees, the Overview and Scrutiny Management Commission and its Sub-Committee(s) and deciding on their composition and making appointments to them;
- appointing representatives to outside bodies where the function has not been delegated to the Leader of the Council;
- adopting the Members Allowances Scheme as set out in Part 14 of the Constitution;
- changing the name of the District;
- confirming the appointment of the Head of Paid Service;
- making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or Personal Bills;



- 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;
- all other matters which, by law, must be reserved to Full Council;
- establish a pool of suitably trained Members from which:
- the Appeals Panel(s) will be constituted by the Head of Legal and Strategic Support to deal with a wide range of appeals including in respect of council tax, refusal to grant permission for Tourist Information and home-to-school transport;
- an Interview Panel will be constituted by the Head of Legal and Strategic Support to undertake the appointment of Officers at Head of Service level and above.

### **2.5.6 Council Meetings**

There are three types of Council meeting:

- the annual meeting;
- ordinary meetings;
- extraordinary meetings.

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

### **2.5.7 Responsibility for Functions**

Part 3 of this Constitution sets out the responsibilities for those Council functions which are not the responsibility of the Executive.

## **2.6 Article 6 – The Executive**

(Part 5 (Executive Rules of Procedure) also refers)

### **2.6.1 Role of the Executive**

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

### **2.6.2 Form and Composition of the Executive**

The Executive will consist of the Strong Executive Leader together with at least two but no more than nine other Members appointed to the Executive by the Leader of the Council.

The Executive cannot include the Chairman or Vice Chairman of the Council and there will be no substitutes or co-optees for Executive Members.

Members of the Executive cannot be Members of the Overview and Scrutiny Management Commission or its Sub-Committee(s).

### **2.6.3 Strong Executive Leader**

The Strong Executive Leader will be a Member elected at the Annual Meeting of the Council for a four year period immediately after an ordinary election. The Strong Executive Leader will hold office until:

- they resign from the office; or
- they are no longer a Member; or
- they are removed from office by resolution of the Council.

### **2.6.4 Other Executive Members**

Other Executive Members shall hold office until the next Annual Meeting of the Council, or until:

- they resign from office; or
- they are no longer Members; or
- they are removed from office by the Strong Executive Leader who must give written notice of any removal to the Chief Executive. The removal will take effect immediately after receipt of the notice by the Chief Executive;
- the Deputy Leader is appointed by the Leader, and ceases to be Deputy Leader when the Leader ceases to be Leader, unless they are removed from office sooner (see paragraph 5.1.4 (Appointment of the Deputy Leader))

### **2.6.5 Executive Portfolios**

The Executive Portfolios are as follows:

- Leader, Strategy and Communications
- Deputy Leader, Adult Social Care
- Children, Education and Young People
- Economic Development and Planning

- Environment
- Finance
- Internal Governance
- Public Health and Community Wellbeing
- Transport and Countryside

### **2.6.6 Proceedings of the Executive**

Proceedings of the Executive shall take place in accordance with the Executive Rules of Procedure set out in Part 5 of this Constitution.

### **2.6.7 Access to Information**

The Head of Legal and Strategic Support 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 after a meeting.

### **2.6.8 Responsibility for Functions**

The Executive Leader will maintain a list within Part 3 of this Constitution setting out which individual Members of the Executive, Committees of the Executive, Officers or joint arrangements are responsible for the exercise of particular Executive functions.

### **2.6.9 Health and Wellbeing Board**

To discharge those functions required to be discharged by a Health and Wellbeing Board under the Health and Social Care Act 2012 (or any amending or replacing legislation) including:

- (a) Overseeing the preparation of a Joint Strategic Needs Assessment with relevant Clinical Commissioning Groups.
- (b) Developing a Strategy by the exercise of Council functions, for meeting the needs identified in the Joint Strategic Needs Assessment.

## **2.7 Article 7 – Overview and Scrutiny**

(Part 6 (Overview and Scrutiny Rules of Procedure) also refers)

### **2.7.1 Form and Composition**

The Council will appoint one Overview and Scrutiny Management Commission to discharge the functions conferred by it under Section 21 of the Local Government Act 2000, the Health and Social Care Act 2001, the Local Government Act 2003, the Police and Justice Act 2006 and the Local Government and Public Involvement in Health Act 2007.

The Commission will consist of 9 Members, reflecting the political composition of the Authority. Members of the Executive cannot be Members of the Overview and Scrutiny Management Commission. Members of the Executive can be Members of a Task Group created under the Overview and Scrutiny Management Commission.

### **2.7.2 Terms of Reference**

The terms of reference for the Overview and Scrutiny Management Commission can be found in Part 6.1.2 (Overview and Scrutiny Management Commission Terms of Reference).

### **2.7.3 Co-optees**

The Council wishes to promote the involvement of the local community in its decision making. Appropriate procedures and structures will therefore be put in place to enable as wide a cross section of the Community to be involved as possible.

### **2.7.4 Task Groups**

The Overview and Scrutiny Management Commission may choose to create Task Groups to investigate or review a particular topic. Task Groups will also reflect the political composition of the Authority.

### **2.7.5 Call-in**

Decisions taken by the Executive and individual Executive Members or Officers can be called-in (by five Members giving notice) within five days of the decision being published, provided the decision has not been implemented. The Overview and Scrutiny Management Commission will then review the decision at its next meeting or at a Special meeting and decide whether or not to refer it back to the Executive or Executive Member or to refer it to Full Council for review.

### **2.7.6 Councillor Call for Action**

The Councillor Call for Action is a mechanism that provides Elected Members of the Council with the opportunity to ask for discussions as scrutiny committees on issues where local problems have arisen and where other methods of resolution have been exhausted.

The Overview and Scrutiny Management Commission will appoint members to any body established to consider a Councillor Call for Action. Terms of reference and all connected matters will be agreed by the Overview and Scrutiny Management Commission Part 13, Appendix I refers.

**2.7.7 Finance**

The Overview and Scrutiny Management Commission) will exercise overall responsibility for any finances made available to them.

**2.7.8 Proceedings of the Overview and Scrutiny Management Commission and its Sub-Committee(s)**

Proceedings of the Overview and Scrutiny Management Commission shall take place in accordance with the Overview and Scrutiny Rules of Procedure set out in Part 6 of this Constitution.

**2.7.9 Access to Information**

The Head of Legal and Strategic Support will ensure that Overview and Scrutiny Management Commission, reports and background papers, are made publicly available as soon as possible.

**2.7.10 Reports**

The Overview and Scrutiny Management Commission will report annually on the work it and Task Groups have completed or proposed to undertake for inclusion in the Commissions Work Programme.

**2.7.11 Proceedings of Overview and Scrutiny Management Commissions, Sub-Committees and Task Groups**

The Overview and Scrutiny Commission, and Task Groups will conduct their proceedings in accordance with the Procedure Rules set out in Part 6 of this Constitution.

## **2.8 Article 8 – Regulatory and Other Committees**

(Part 7 (Regulatory and Other Committees Rules of Procedure) also refers)

### **2.8.1 Area and District Planning Committees**

The Council will delegate its powers in respect of certain regulatory functions (as set out in Part 3 (Scheme of Delegation)) to the two Area Planning Committees (Eastern and Western) and the District Planning Committee. The Area Planning Committees will consider applications that are not delegated to Officers and applications or issues referred to the Committee in accordance with the approved protocol. Both Area Planning Committees will comprise 9 Members with up to 3 substitutes from each political group, reflecting the political composition of the Authority.

Recommendations from Area Planning Committees considered by the Development Control Manager and/or their representative to have a possible conflict with a policy that would undermine the Development Plan, or where there is a district wide public interest or there is a possibility for claims for significant costs against the Council, will be referred to the District Planning Committee.

The District Planning Committee will comprise 10 Members (5 Members drawn from the Membership of the Eastern Area Planning Committee and 5 Members drawn from the Membership of the Western Area Planning Committee), reflecting the political composition of the Authority. Meetings will be arranged as and when required to deal specifically with matters referenced up from the two Area Planning Committees. The Chairman of the District Planning Committee shall not be the Chairman of the Area Planning Committee that referenced the item up.

### **2.8.2 Licensing Committee**

The Council will delegate all its Licensing Authority functions (as set out in Part 3 (Scheme of Delegation)) to a Licensing Committee. The Licensing Committee will consist of 12 Members, reflecting the political composition of the Authority and may not appoint substitutes.

### **2.8.3 Licensing Sub-Committee**

The Licensing Committee will appoint as and when necessary a Sub-Committee to determine applications where representations have been received (as set out in Part 3 (Scheme of Delegation)). The Sub-Committee shall comprise three Members and one substitute drawn from the Membership of the Licensing Committee.

No Member who sits on a Licensing Sub-Committee shall be entitled to determine a Licensing Application from within their own Ward.

### **2.8.4 Governance and Ethics Committee**

The Governance and Ethics Committee shall consist of nine Members reflecting the political balance of the Council and will be supported by two non-voting co-opted Parish Councillors and up to two substitute non-voting co-opted Parish Councillors. The Council will delegate its work in relation to the governance and financial probity of the Council as well as promoting and maintain high standards of conduct by both District and Parish Councillors to this Committee.

The overall purpose of the Governance and Ethics Committee is to provide effective challenge across the Council and independent assurance on the risk management and governance framework and associated internal control environment to members and the public, independently of the Executive. The Governance and Ethics Committee is also responsible for receiving the annual Audit Letter and for signing off the Council's final accounts.

The Committee also promotes and maintains high standards of conduct throughout the Council and determines whether breaches of the relevant Code of Conduct have occurred. They promote, educate and support Councillors (both District and Parish) in following the highest standards of conduct and ensuring that those standards are fully owned locally.

### **Advisory Panel**

The Governance and Ethics Committee shall be supported by an Advisory Panel comprising ten members (two members of the administration, two members from each of the opposition groups , two parish council representatives and two Independent Persons).

The Advisory Panel shall be responsible for dealing with complaints where evidence of breach of the Code has been identified and shall report its findings to the Governance and Ethics Committee for formal decision.

The Advisory Panel shall be chaired by an Independent Person.

### **Independent Person(s)**

An Independent Person(s) shall be appointed by the Council and shall be consulted by it before any decision is made to investigate an allegation against any member of the Council. The Independent Person may be consulted by any member or Parish Council member against whom an allegation is made. The Independent Person(s) shall not chair the Governance and Ethics or be entitled to vote on matters before it.

In addition The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 include provisions requiring a panel to be set up to advise on matters relating to the dismissal of the Council's Proper Officers (Head of Paid Service, S151 Officer and Monitoring Officer). The Act requires at least two Independent Persons who have been appointed under section 28(7) of the Localism Act 2011 to be appointed to the panel. The Authority has elected to appoint three Independent Persons.

### **Role and Function**

The roles and functions of the Governance and Ethics Committee are to:

1. consider and make recommendations to the Council on proposed changes to the Constitution;
2. consider any governance issues emanating from the Government and determine their effect on the Council's business and governance processes;
3. review the effectiveness of the Council's Risk Management arrangements, the control environment and associated Anti Fraud and Corruption arrangements;

4. seek assurance that action is being taken on risk related issues identified by auditors and inspectors;
5. be satisfied that the Council's assurance statements (currently produced annually by all Heads of Service) and the Annual Governance Statement properly reflect the risk environment and any actions required to improve it;
6. be satisfied that any Partnership that the Council enters into has robust Governance and Risk Management arrangements and that any risk to the Council from the Partnership is minimised;
7. approve the Internal Audit Strategy and Plan (to ensure that there is adequate coverage) and monitor performance (assessing whether adequate skills and resources are available to provide an effective function);
8. receive an interim and annual report from the Chief Internal Auditor on work undertaken during the year;
9. consider any issues brought to the attention of the Committee, or Chair and Vice-Chair, by the Chief Internal Auditor at any time during the year;
10. consider reports of external audit and inspection agencies;
11. ensure that there are effective relationships between external and internal audit and inspection agencies and other relevant bodies and that the value of the audit process is actively promoted;
12. review the financial statements, including the suitability of accounting policies and treatments, provisions or adjustments;
13. review the external auditors annual audit letter, any other reports and opinion and monitor management action in response to issues raised. (Also comment on the external auditors planned work programme);
14. promote and maintain high standards of conduct by Councillors and co-opted Members;
15. assist the Councillors and co-opted Members to observe the Members' Code of Conduct;
16. advise the Council on the adoption or revision of the Members' Code of Conduct;
17. monitor the operation of the Members' Code of Conduct;
18. advise, train or arrange to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
19. grant dispensations to Councillors and co-opted Members on requirements relating to interests set out in the Members' Code of Conduct;
20. ensure arrangements are in place under which allegations of misconduct in respect of the Members' Code of Conduct can be investigated and to review such arrangements where appropriate;



21. exercise (15) to (21) above in relation to the Parish / Town Councils wholly or mainly in its area and the Members of those Parish / Town Councils.

### **2.8.5 Personnel Committee**

The Personnel Committee shall consist of five Members reflecting the political balance of the Council. The Council will delegate its work in relation to agreeing and making changes to HR and Health and Safety Policies and Procedures, appointing staff at Head of Service level and above by means of an Appointments Panel, appointment of Proper Officers, and for determining requests for the early release of pensions, subject to the financial implications of each request being approved the Executive decision making process.

### **2.8.6 Allocation of Non-Executive Functions**

Further details about the allocation of non-Executive functions are set out in Part 3 (Scheme of Delegation) of this Constitution.

### **2.8.7 West Berkshire Council's Regulatory Committees and Sub-Committees**

<b>Committee</b>	<b>Purpose</b>
Eastern Area Planning Committee	To consider, on behalf of Council, applications for planning permission and other Development Control matters which are outside those delegated to Officers or are referred to the Committees in accordance with the approved protocol.
Western Area Planning Committee	To consider certain regulatory functions e.g. planning conditions, listed building and conservation area consent, where relevant (see Part 3 of the Constitution)
	To assist in the development of the Local Development Framework and Local Transport Plan and other strategic plans in order to make recommendations to the Executive on these matters.
District Planning Committee	To consider, on behalf of the Council, recommendations from Area Planning Committees considered by the Development Control Manager and/or their representative to have a possible conflict with a policy that would undermine the Development Plan or where there is a district wide public interest or there is a possibility for claims for significant costs against the Council.  Following a vote on the matter /application where the majority of Members of an Area Planning Committee so resolve.
Licensing Committee	To consider, on behalf of the Council as Licensing Authority, applications for licences where relevant representations have been received by the Police. The Committee will also consider applications to review

<b>Committee</b>	<b>Purpose</b>
	Premises Licences/Club Premises Licences.
Licensing Sub-Committee	<p>To consider, on behalf of the Licensing Committee, applications for a Premises Licence, Personal Licence, Premises Licence/Club Premises Certificate, Provisional Statement or variation of a Premises Licence/Club Premises Certificate where relevant representations have been received.</p> <p>The Sub-Committee will also consider applications for a Personal Licence from individuals with unspent convictions and determination of a Police representation to a temporary event notice.</p>
Governance and Ethics Committee	<p>To provide effective challenge and independent assurance on the risk management and governance framework and associated internal control environment across the Council to Members and the public.</p> <p>To promote and maintain high standards of conduct by all councillors throughout the District.</p>
Personnel Committee	<p>To appoint staff at Head of Service level and above by means of an Appointments Panel. (Note: The Appointments Panel shall be selected from a pool of relevant Members.)</p> <p>To determine requests for the early release of pensions subject to the financial implications of each request being approved through the Executive decision making process.</p> <p>To appoint Proper Officers.</p> <p>To designate officers as Head of Paid Service, Monitoring Officer and Section 151 Officer.</p> <p>To agree the financial implications of requests for the early release of pensions, subject to the personnel aspects of each request being approved by the Personnel Committee.</p> <p>To approve new and revised HR and Health and Safety Policies.</p> <p>To approve new and revised HR and Health and Safety procedures. (Note: The power to approve new and revised HR policies and procedures is delegated to the Chief Executive. The Chief Executive may decide to refer particular HR policies and procedures to the Personnel Committee rather than exercise the delegation.)</p> <p>To designate an officer as the Director of Adult Social Care and to designate an officer as the Director of Children's Services.</p>
Appeals Panel	To consider, on behalf of the Council, appeals from individuals in respect of decisions taken by the Council

Committee	Purpose
	including home-to-school transport, Council Tax and Tourist Information Signs.

## 2.9 Article 9 - Joint Arrangements

### 2.9.1 Arrangements to Promote Wellbeing

The Executive, in order to promote the economic, social or environmental wellbeing of its area, may:

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

### 2.9.2 Joint Arrangements

The following conditions will be put in place in respect of joint arrangements:

- the Council may establish joint arrangements with one or more local authorities and/or their Executives to exercise functions in any of the participating authorities, or advise the Council;
- the Executive may establish joint arrangements with one or more local authorities to exercise functions which are Executive functions. Such arrangements may involve the appointment of Joint Committees with these other local authorities;
- except as set out below, the Executive may only appoint Executive Members to a Joint Committee and those Members need not reflect the political composition of the local authority as a whole;
- 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 Local Authority, and that area is smaller than two-fifths of the Authority by area or population. The Executive may appoint to the Joint Committee any Councillor who is a Member for a Ward which is wholly or partly contained within the area; in this case the political balance requirements do not apply to such appointments;
- details of any joint arrangements including any delegations to Joint Committees will be found in the Council's Scheme of Delegation in Part 3 of this Constitution.

### 2.9.3 Access to Information

The following conditions will be put in place in respect of access to information:

- The Access by the Public to Information Rules of Procedure in Part 8 of this Constitution apply to joint arrangements.
- 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.

- 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.

#### **2.9.4 Delegation to and from Other Local Authorities**

The following conditions will be put in place in respect of delegation to and from other local authorities:

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

#### **2.9.5 Contracting Out**

The Council (for non-Executive functions) and the Executive (for Executive functions) 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.

## **2.10 Article 10 – Officers**

(Part 15 (Management Structure) also refers)

### **2.10.1 Management Structure**

#### **(a) General**

The Council may engage such staff (referred to as ‘Officers’) as it considers necessary to carry out its functions.

#### **(b) Chief Officers**

The Council will engage persons to a number of Chief Officer posts as set out in Part 15 of this Constitution.

#### **(c) Head of Paid Service, Monitoring Officer and any Financial Officer**

The Council will designate the following posts as shown:

- Chief Executive - Head of Paid Service
- Head of Legal and Strategic Support - Monitoring Officer
- Head of Finance and Property - Chief Finance Officer

The Head of Paid Service will determine and publicise a description of the overall structure of the Council, showing the management structure and deployment of Officers. This is outlined in detail in Part 15 of this Constitution.

### **2.10.2 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.

### **2.10.3 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 to the Executive in relation to an Executive function, if they consider 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 Governance and Ethics Committee**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Governance and Ethics Committee.

**(d) Conducting Investigations**

The Monitoring Officer will conduct investigations or appoint an investigator into matters referred by the Governance and Ethics Committee and make reports or recommendations in respect of them to the Governance and Ethics Committee or its relevant Sub-Committee.

**(e) Executive Decisions 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.

**2.10.4 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) **Giving Financial Information**

The Chief Finance Officer will provide financial information to the media, Members of the public and the community.

(f) **Provision of Resources**

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.

**2.10.5 Conduct**

Officers will comply with the Officers' Code of Conduct and the Protocol on Officer/Member Relations set out in Part 13 (Codes and Protocols) of this Constitution.

**2.10.6 Employment**

The recruitment, selection and dismissal of Officers will comply with the Personnel Rules of Procedure set out in Part 12 of this Constitution.

**2.10.7 Access to Information - Proper Officer for Access to Information**

The Head of Legal and Strategic Support will ensure that all decisions made by the Council, Executive, Committees and Sub-Committees together with the reasons for those decisions and relevant Officer reports and background papers, are made publicly available as soon as possible.

## **2.11 Article 11 - Finance, Contracts and Legal Matters**

**(Parts 10 (Financial Rules of Procedure) and 11 (Contract Rules of Procedure) also refer)**

### **2.11.1 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Rules of Procedure set out in Part 10 of this Constitution.

### **2.11.2 Contracts**

Every contract made by the Council will comply with the Contract Rules of Procedure set out in Part 11 of this Constitution.

### **2.11.3 Legal Proceedings**

The Head of Legal and Strategic Support 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 Head of Legal and Strategic Support considers that such action is necessary to protect the Council's interests.

### **2.11.4 Authentication of Documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Head of Legal and Strategic Support or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

All contracts entered into by the Council must be in writing in a form approved by the Head of Legal and Strategic Support or their delegated Officer. Standard Forms of Contract must be used wherever possible.

The Council's seal must be witnessed by the Head of Legal and Strategic Support or any nominated representative on any documents to which the Council is a party and the seal affixed in accordance with Article 2.11.5 (Common Seal of the Council).

### **2.11.5 Common Seal of the Council**

The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal and Strategic Support. 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 Head of Legal and Strategic Support should be sealed. The affixing of the Common Seal will be attested by the Head of Legal and Strategic Support or some other person authorised by them.



## **2.12 Article 12 - Review and Revision of the Constitution**

### **2.12.1 Duty to Monitor and Review the Constitution**

The Council, via the Finance and Governance Group, will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

### **2.12.2 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:

- have regard to changes in legislation;
- observe meetings of different parts of the Member and Officer structure;
- undertake an audit trail of a sample of decisions;
- record and analyse issues raised with them by Councillors, Officers, the public and other relevant stakeholders; and
- compare practices in this Authority with those in other comparable authorities, or national examples of best practice.

### **2.12.3 Changes to the Constitution**

Changes to the Constitution will only be approved by the full Council with the exception of Part 15 (Management Structure) which will be updated by the Head of Paid Service in accordance with agreed changes to the Council's Management Structure.

The Head of Legal and Strategic Support acting as Monitoring Officer may make minor amendments to the Constitution in order to ensure that legislative provisions are current and any typographical or other errors are corrected.

## **2.13 Article 13 - Suspension, Interpretation and Publication of the Constitution**

### **2.13.1 Suspension of the Constitution**

The Articles of this Constitution may not be suspended.

The Rules specified in Parts 4, 5, 6, and 7 of this Constitution may be suspended in the following circumstances:

- (a) Where specific provision for suspensions are included within the Rules. In such a case, the Procedure outlined in that provision must be followed.
- (b) By decision of the Council, provided that notice has been given in the form of a formal Notice or Notices or in a report within the agenda papers for the meeting; or
- (c) By decision of the Council, with at least half the total number of Councillors present.

The extent and duration of any suspension of Rules must be proportionate to the result to be achieved, and must take account of the purposes of the Constitution set out in Article 1.

### **2.13.2 Interpretation of the Constitution during Council Meetings**

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

### **2.13.3 Publication of the Constitution**

The following conditions will apply in respect of publication of this Constitution:

- The Monitoring Officer will provide a copy of this Constitution to each Member of the Authority upon delivery to them of that individual's declaration of acceptance of office on the Councillor first being elected to the Council.
- The Monitoring Officer will ensure that copies are available for inspection on the Council's website, and 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.
- The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

### **2.13.4 Schedule 1 - Description of Executive Arrangements**

The following parts of this Constitution constitute the Executive arrangements:

- Article 4 (Decision-making) and the Access by the Public to Information Rules of Procedure
- Article 6 (The Executive) and the Executive Rules of Procedure;
- Article 7 (Overview and Scrutiny) and the Overview and Scrutiny Rules of Procedure;

- Article 9 (Joint arrangements);
- Part 3 (Responsibility for Functions).