

INTRODUCTION TO THE CONSTITUTION

A BRIEF GUIDE

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1. INTRODUCTION

- 1.1 Under the Local Government Act 2000 the Council is required to adopt a formal Constitution when operating executive arrangements. A number of Regulations have also been made under the Act which prescribe in considerable detail how the Council should draw up the content of its Constitution, how it allocates functions and how it conducts its business. The Constitution, therefore, has to contain a large number of provisions and in this respect it reflects, generally, the legislation, Government Guidance and model documents.
- 1.2 Because it has to be comprehensive and meet legal requirements and address technical concepts, the Constitution is both long and complex. It is regrettably not a user-friendly document!
- 1.3 The purpose of this Guide is not to summarise all the provisions of the Constitution. This Guide seeks to assist Members and Officers by outlining how the Constitution works, and to focus on some of the practical consequences, both in relation to the role of Members of the Council, and that of employees.
- 1.4 The guide describes the component parts of the Constitution, outlining the main features of each and addressing some working or practical consequences of the Constitution.
- 1.5 Of necessity, the Guide has to simplify the complexities of the Constitution and in some instances what it says will be a general rule rather than explain all the exceptions to the rule. So if the reader is in any doubt, reference must be made to the Constitution itself or advice taken from Legal and Democratic Services. Cross-references are provided to help.

2. THE FRAMEWORK OF THE CONSTITUTION

2.1 The Council

- 2.1.1 The structure diagram attached to this Introduction shows the formal relationships between the Council, the Executive Committee and the Council's other Committees.
- 2.2 A fundamental point is that the legislation provides that the Leader and Executive Committee are responsible for what are called 'executive functions' (which cover most of the day to day political decisions), and the Council and committees are responsible for 'non-executive' functions.

2.2 Officer Structure and Shared Services

- 2.2.1 The Council has agreed to the appointment of a shared Chief Executive and a shared management team which it shares with Bromsgrove District Council. Under the arrangements services will be shared and delivered by one single team across both Councils.
- 2.2.2 Further details of the shared management team are set out at para 9 of this document and at Part 17. The shared management team has been in place since April 2010. The

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co-operation between the two Councils on sharing services is reflected by a legal agreement (Overarching Framework Agreement).

Proposals for shared services between Redditch and Bromsgrove are considered in the first instance by a panel of senior members of both Councils who make up the Shared Services Board. The Board has no decision making powers on behalf of the two Councils, and any new arrangements for delivery of services require the approval of the full Council.

2.2.3 Notwithstanding the move to delivery of services jointly across both Councils, each Council retains its sovereignty and ability to make decisions for its own constituents independently. Therefore, in terms of decision making and the Constitution, each Council continues to be politically independent and to make its own decisions in accordance with the provisions of its own Constitution. There is no intention at this juncture for decision making to be passed to a “joint Council” for the two districts.

2.3 Other arrangements for joint working

2.3.1 In addition to the shared arrangements with Bromsgrove District Council, the Council is involved in other joint arrangements for provision of services with other Councils in Worcestershire. Since June 2010 Bromsgrove District Council has been the host authority for Worcestershire Regulatory Services. This is a new service that has been created to carry out the Environmental Health and Licensing functions of the six Worcestershire District Councils, together with the Trading Standards function of the County Council. The staff for the service is employed by Bromsgrove District Council and it is governed by a Joint Committee made up of two members from each of the 7 authorities involved.

2.3.2 In relation to other service areas, Internal Audit Services are now delivered for Redditch Borough Council as part of a shared service hosted by Worcester City Council. New shared services in Economic Development, Emergency Planning, Land Drainage and Building Regulations are operated jointly with Bromsgrove and Wyre Forest District Councils. In 2015 the Council agreed to establish a Joint Property Vehicle with other public bodies to manage effectively all public sector property in the Borough.

3. THE FULL COUNCIL

3.1 Composition and Role

3.1.1 The Council comprises 29 elected Councillors (often referred to as ‘Members’).

3.1.2 The job of the full Council is to approve the Council’s main policies (the Policy Framework as set out in Part 2 the Articles of the Constitution) and the Annual Budget (both revenue and capital). There are other matters reserved to the full Council to decide. These are set out in the Articles at 4.2 and include the appointment of the Leader of the Council.

3.1.3 The Council receives minutes from the Executive Committee (Executive or Exec’ for short), which may include recommendations to the Council and also record the business it has considered. In most cases the Executive, because of its decision-making role, and the breadth of its responsibilities will be reporting to the Council on matters where it has already made a decision under its delegated powers.

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- 3.1.4 The Council may also receive reports / recommendations from its other Committees.
- 3.1.5 The dates of full Council meetings will be published well in advance. The Annual Council Meeting will be in May and the Council will decide its budget in February to allow Council Tax calculations for the new financial year from April.
- 3.1.6 Members of the Council have the ability to requisition an extraordinary meeting of the Council under paragraph 3 of part 7 of the Constitution (Council Procedure Rules).
- 3.1.7 The Chief Executive, the Monitoring Officer and the Section 151 Officer (Senior Financial Officer) have the right to submit reports directly to the full Council.
- 3.1.8 It should be noted that unless the matter is one which:-
- is for the full Council or its Committees to determine (as set out in Parts 3 - 6)
 - is contrary to the Policy Framework or not wholly in accordance with the Council's budget
 - cannot in law be the responsibility of the Executive Committee,

the Council or its other Committees cannot take a decision about that matter (or overturn a decision of the Executive), that responsibility rests with the Executive. Similarly, the Executive cannot take a decision which the responsibility of the Council or of one of its Committees.

3.2 Meetings of the Council

- 3.2.1 Meetings of the Council are relatively formal. The Council's Procedure Rules (Part 7 of the Constitution) govern how a meeting of the Council is conducted. The same rules also apply to certain committee meetings; other committees have their own procedure rules including the Executive Committee, Overview and Scrutiny Committee, Planning Committee and Audit, Governance and Standards Committee.
- 3.2.2 At full Council Meetings the agenda will include presentation of recommendations from the Executive Committee to Council and reports on any issues to be decided by the Council. Individual Members can ask questions of the Leader or propose motions for debate.

4. THE EXECUTIVE COMMITTEE

4.1 Composition and Role

- 4.1.1 The Council is required by law to have an 'Executive', and has chosen the "Leader and Cabinet" model. The Leader is responsible for making arrangements to discharge functions which fall to the Executive, whether through the Leader personally, individual Executive Committee members, or officers.
- 4.1.2 The Executive Committee is not required to be politically balanced. Meetings are held in public but the Executive Committee must comply with the Access to Information Rules as set out in Part 8.
- 4.1.3 The Council appoints (and can subsequently remove) the Leader at the Annual Meeting of the Council. The Leader's initial appointment is for a 4-year term, but this is reviewable

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at least annually at the Council's Annual Meeting. Members of Redditch Borough Council are elected 'by thirds', in other words, a third of the Council members retire each year in rotation. They then have a four-year term of office. (In the fourth year County Council elections are held.)

- 4.1.4 The Executive Committee comprises the Leader of the Council and a minimum of 2 and maximum of 9 Members of the Council of his/her choice.
- 4.1.5 The Leader presides at meetings of the Executive Committee. The Deputy Leader presides in the Leader's absence. In the absence of both, a Member nominated by those present at the meeting will preside.
- 4.1.6 The Leader determines the number of areas of political responsibility or "portfolios" and their allocation to members of the Executive Committee (Portfolio Holders).
- 4.1.7 The Leader has determined that the Executive Committee will take decisions collectively. No individual members of the Executive Committee have delegated powers to take decisions on behalf of the Executive Committee.
- 4.1.8 The Executive Committee takes decisions on all matters relating to the functions of the Council except those which –
- are reserved to the full Council (such as the Budget and Policy Framework, Members' Allowances and Code of Conduct)
 - are ones which by law the Executive Committee cannot take (such as deciding Planning applications and Standards matters)
 - by choice may not and have not been allocated to the Executive Committee.
- 4.1.9 In general terms, it is therefore the Executive Committee which will take the main political decisions in relation to services.
- 4.1.10 Many decision-making powers continue to be delegated to officers to allow the day to day operation of services to continue. Parts 3 to 6 contain the scheme of delegation to committees and officers.
- 4.1.11 Collectively and individually the Executive Committee are subject to the overview and scrutiny arrangements which the Council has established (Section 5 below).

4.2 'Key Decisions'

- 4.2.1 Certain types of decision which are the responsibility of the Leader and Executive Committee are called 'Key Decisions'. It is important to know what they are because only the Executive Committee will be taking Key Decisions; and (generally) advance notice has to be given of Key Decisions to be taken through the procedure known as the Work Programme (4.3 below).
- 4.2.2 Key Decisions are ones which are likely to:-
- (i) result in the Council incurring expenditure, foregoing income or the making of savings in excess of £50,000 or which are otherwise significant having regard to the Council's budget for the service or function to which the decision relates; or

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- (ii) be significant in terms of its effect on communities living or working in an area comprising two or more wards in the Borough.
- (iii) Involve any proposal to cease to provide a Council service (other than a temporary cessation of service of not more than 6 months).

4.3 The Work Programme

- 4.3.1 The Leader of the Council has to publish the Work Programme each month, which contains a list of what Key Decisions the Executive Committee are likely to take in the following months; when the decision is likely to be taken by the Executive Committee; a list of the documents which the Executive Committee will consider; whether any decisions are likely to be considered without the public being present and the steps to be taken by any person who wants to make representations to the Executive Committee about the matter. For transparency, the Work Programme also includes non-Key Decisions going to Executive Committee.
- 4.3.2 The purpose of the Work Programme is to alert the public and members to when Key Decisions are to be taken by the Executive Committee so that they can raise matters of concern with the local Councillor or members of the Executive Committee or attend.
- 4.3.3 The Work Programme has to be updated monthly so that as more details become available, more information can be included in it.
- 4.3.4 The detailed requirements in relation to the Work Programme are set out in Part 8, Access to Information Rules.
- 4.3.5 There are detailed procedures in Part 8 of the Constitution about taking Key Decisions which for some reason have not been included in a Work Programme or which are very urgent. The Overview and Scrutiny Committee also has a right to require the Executive Committee to report to the Council on Key Decisions which they believe to have been taken otherwise than in accordance with the required procedures – and the Leader has to report to the full Council quarterly on all special urgency decisions.

4.4 Meetings of the Executive Committee

- 4.4.1 The Executive Committee meets regularly in public, unless the matter to be discussed is confidential or exempt.
- 4.4.2 The Executive Committee may also meet privately (with no public or local members present) when the business will only be the discussion of matters with officers and not the taking of decisions. They may also meet for informal briefings.
- 4.4.3 The Constitution allows certain members to speak at Executive Committee meetings (but not to vote), for instance the Chair or Vice-Chair of the Overview and Scrutiny Committee or a lead Member of a Task Group.
- 4.4.4 The Executive Committee will consider Officer reports, which make recommendations for the Executive Committee to consider.
- 4.4.5 Decisions taken by the Executive Committee are subject to the call-in procedures referred to in Section 5 below. Save in the limited circumstances referred to, they will not take effect until the fifth working day after publication of the minutes of the relevant meeting of the Executive Committee to members of the Council. Due allowance must be

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made for this in the preparation of any reports to the Executive Committee which require a prompt decision as the minutes must say whether implementation is so urgent that it cannot await the outcome of possible call-in – and why (see paragraph 4.4.8 below). Urgency of implementation may need to be specifically addressed in reports.

- 4.4.6 Chief Officers (or their representatives) will be entitled to be present at all meetings of the Executive Committee.
- 4.4.7 All meetings of the Executive Committee will be minuted and every member will receive a copy. These minutes, which are issued with a letter indicating the date of dispatch, are the formal record of decisions and also the “trigger” for the call-in procedure. They will also indicate which items (if any) are urgent so that they are not subject to ‘call-in’ but fall to be dealt with under the urgency procedures.
- 4.4.8 Urgent cases will be those where delay likely to be caused by the call-in process could seriously prejudice either the interest of the Council or the public, and the Chair (or in his/her absence Vice-Chair) of the Overview and Scrutiny Committee agrees that the decision is urgent and cannot reasonably be deferred. If those members referred to are unable to act, then the agreement of the Chief Executive or his/her nominee will suffice. These provisions allow a 'check and balance' allowing a person outside the Executive Committee to decide whether or not there should be implementation without the risk of call-in suspending the decision.
- 4.4.9 The Executive Committee's own procedures are governed by Appendix 7 of the Constitution. But the Executive Committee can largely govern its own procedure.

5. OVERVIEW AND SCRUTINY ARRANGEMENTS

5.1 Composition and Role

- 5.1.1 The Council is required by law to have arrangements for Overview and Scrutiny by which recommendations on the development of policies can be made and the Executive Committee be held to account for its actions.
- 5.1.2 No bodies established to carry out Overview and Scrutiny have any powers to take decisions on behalf of the Council.
- 5.1.3 The Council operates a single Overview and Scrutiny Committee. From time to time the Committee will establish Task Groups to carry out scrutiny exercises.
- 5.1.4 The Overview and Scrutiny Committee comprises a Chair and other members. The Committee is not politically balanced – the Council has to agree to this arrangement each year.
- 5.1.5 The size of any Task Group will vary according to the purpose for which it is established. The places on each Task Group need not be allocated strictly in accordance with the political balance of the Council so as to allow Members with a particular knowledge or interest or commitment to take part.
- 5.1.6 Executive Committee Members cannot serve on the Overview and Scrutiny Committee, or on any Task Group.

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5.1.7 The general terms of reference of the Overview and Scrutiny Committee are to perform all overview and scrutiny functions on behalf of the Council in relation to any matter affecting the Borough and its inhabitants

The specific terms of reference include:-

- a. To receive and consider Councillor Calls for Action.
- b. To perform the functions relating to Crime and Disorder Scrutiny (in accordance with the Police and Justice Act 2006).
- c. To receive and consider certain Petitions, under the Petitions Scheme (Part 29 of the Constitution refers).
- d. To monitor performance improvement .
- e. To scrutinise the Budget.
- f. To identify unsatisfactory progress or performance and make recommendations on remedial action to the Executive Committee.
- g. To monitor Council documents / strategies, including:
 - The Council Plan
 - The Council Annual Report
 - The Sustainable Community Strategy
 - The Sustainable Community Strategy Annual Report
 - Performance Management Strategy / Data Quality Strategy
 - Quarterly Finance & Performance Monitoring reports.

5.1.8 The Overview and Scrutiny bodies have extensive powers to conduct research, carry out consultations, hold investigations, undertake visits, encourage community participation, liaise with other organisations, gather evidence, invite advisers and experts to assist them and question members of the Executive Committee and (in some circumstances) Chief and senior officers about their decisions and performance.

5.1.9 Particular action taken by a Chief or senior officer under delegated powers, which is taken in furtherance of the day to day administration of the service for which the officer is responsible, cannot be called-in or scrutinised. This does not however prevent a questioning of a Chief or senior officer as part of a wider scrutiny exercise.

5.1.10 Scrutiny arrangements are governed by the Overview and Scrutiny Procedure Rules in Part 11 of the Constitution. These include an obligation to declare any party whipping arrangements.

5.2 Call-in

5.2.1 The Council recognises that the right of call-in should only be used in exceptional circumstances when there is evidence to suggest that the Executive Committee has departed from the principles for decision-making. It is not there to be used just because members do not agree with the decision of Executive Committee.

5.2.2 There is a right to call-in decisions taken by the Executive Committee before they are implemented. Within three working days of a meeting of the Executive Committee the minutes of that meeting will be circulated to all members of the Council and will be

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available for inspection. Unless it is identified as urgent in the Minutes, the decision which the Executive Committee has taken will not take effect until five working days have expired after the circulation of the minutes. During the intervening period:-

- not fewer than three members of the Overview and Scrutiny Committee; or
- the Chair of the Overview and Scrutiny Committee; or
- five members of the Council who are not members of the Executive Committee;

may “call-in” (with reasons) the decision. It will then be referred to a meeting of the Overview and Scrutiny Committee which will decide on the most appropriate way of dealing with the call-in.

5.2.3 The called-in Executive Committee decision is then not implemented until either

- the Overview and Scrutiny Committee has accepted the decision (with or without comment); or
- the Overview and Scrutiny Committee has considered the matter, has proposed modifications and/or referred it back to the Executive Committee for reconsideration (or in certain circumstances referred it to the full Council), and the matter has been reconsidered by Executive Committee.

5.2.4 The right of call-in is important in enabling members who are not Executive Committee members to challenge Executive Committee decisions before they are implemented.

5.2.5 The time for call-in is very important, as any Executive Committee decision can be implemented on the expiry of the fifth working day after circulation of the Executive Committee’s minutes, if it is not called-in before then. However, restrictions on call-in apply in cases of urgency.

5.2.6 Reference to the full Council would only be appropriate if the decision called-in is one which the Overview and Scrutiny Committee believes:-

- the Executive Committee cannot in law take; or
- is reserved to the full Council; or
- is contrary or not wholly in accordance with the Budget and Policy Framework.

5.2.7 Details of the call-in procedure are included in the Overview and Scrutiny Procedure Rules (Part 11 of the Constitution).

5.2.8 The operation of call-in will be monitored annually by the Overview and Scrutiny Committee.

6. OTHER COMMITTEES

6.1 Composition and Roles

6.1.1 Certain matters cannot by law be dealt with by the Executive Committee. Apart from those reserved to the full Council, these are in the main planning and regulatory functions, though there are some others.

6.2 Audit, Governance and Standards Committee

6.2.1 The Audit, Governance and Standards Committee's main role is to ensure good stewardship of the Council's resources and to assure the Council about the objectivity and fairness of the financial reporting and performance of the Council, the adequacy of the risk management framework and associated controls within the Council, and that any issues arising from the drawing up, auditing and certifying of the Council's accounts are properly dealt with. The Committee also deals with Standards items and is responsible for the ethical framework within the Council. It promotes and upholds the Council's Code of Conduct which sets out how Councillors behave. It meets at least four times a year, usually quarterly. The arrangements for the Audit, Governance and Standards Committee are set out in the Procedure Rules in Part 12 of the Constitution.

6.3 Planning Committee

6.3.1 The Planning Committee will carry out the planning functions which cannot be the responsibility of the Executive Committee. The main function of the Committee is to decide applications relating to development control, trees and planning enforcement. Meetings will take place in accordance with the Planning Committee Procedure Rules in Part 13 of the Constitution.

6.4 Licensing Committee

6.4.1 The Licensing Committee and its sub-committees carry out the Licensing functions on behalf of the Council including deciding Licensing policies and considering applications in relation to licensed premises, taxis, street trading and gambling.

6.5 Appeals Committee

6.5.1 The Council has an Appeals Committee to determine appeals in relation to Employment Appeals.

6.6 Details relating to all the above Committees etc are contained in Parts 3 - 6 of the Constitution. The Members' Code of Conduct is set out in Part 19 of the Constitution.

7. AREA ARRANGEMENTS

7.1 The Council participates in the Local Strategic Partnership. This involves working alongside professionals from the County Council and other public bodies in order to improve outcomes for the community.

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7.2 The Council also has a role to support the work of its only Parish Council - Feckenham - including providing advice and support regarding ethical standards and Code of Conduct and electoral matters.

8. MEMBERS

8.1 Service on the Executive Committee

8.1.1 Every member of the Council, except the Mayor and Deputy Mayor, is eligible to serve on the Executive Committee.

8.2 Service on other committees

8.2.1 Every member is eligible to serve on the Council's committees save that Executive Committee Members may not serve on the Overview and Scrutiny Committee and its Task Groups.

8.3 Substitution

8.3.1 There can be no substitution for members of the Executive Committee.

8.3.2 Other substitution rules are as detailed in the Terms of Reference of Committees at Part 4 of the Constitution.

8.4 Budget and Policy Framework Procedure Rules

8.6.1 The Budget and Policy Framework Procedure Rules are set out in Part 9. These set out the procedure by which the Executive Committee will draw up proposals for the budget and policy framework of the Council.

8.7 Members' Allowances

8.7.1 Members may receive the allowances contained in the Scheme of Members Allowances (Part 18 of the Constitution). These are set by Council following recommendations made by an Independent Remuneration Panel.

8.8 Ethical Framework

8.8.1 Part 19 sets out the Members' Code of Conduct and Part 20 the Code of Conduct relating to the acceptance of gifts and hospitality by Members.

8.9 Access to Information

8.9.1 The Constitution sets out in Part 8 (Access to Information Procedure Rules) arrangements for public access to information and to which members are also entitled.

8.9.2 The Rules also prescribe other information available in connection with overview and scrutiny arrangements and additional rights of access for members.

8.10 Member - Officer Relations

810.1 The Council and the public are entitled to expect high standards of conduct from members. In addition to the Members' Code of Conduct, Members are subject to the Member-Officer Protocol in Part 21 of the Constitution.

8.11 Member involvement in making Regulatory decisions

8.11.1 Members need to ensure that they take particular care in their dealings with members of the public and businesses when they are members of either of the Council's Planning Committee and Licensing Committee and its sub-committees. This is because members of these committees will be called upon to make decisions on applications which may be made by people they know or with whom they have had contact either personally or in their role as a Councillor.

8.11.2 Additional guidance for members relating to Planning and Licensing is set out in the Codes of Practice for Planning at Part 23 and the Code of Practice for Licensing at Part 24.

8.12 Member use of IT facilities

8.12.1 Members are encouraged to use IT (or ICT) facilities to access Council and Committee agendas and to enable them to carry out their duties effectively and efficiently. The rules around use of IT by members are set out in the Protocol in the use of ICT Facilities in Part 25 of the Constitution.

8.13 Outside Bodies

8.13.1 The Council appoints or nominates Members to sit on a wide range of outside bodies and organisations.

Further information and guidance to Members in relation to their role on any Outside Bodies is set out in the Protocol on Members Representation on Outside Bodies in Part 27 of the Constitution.

8.13 Members Roles and Responsibilities

8.13.1 A number of 'role descriptions' have been produced setting out the potential range of duties and responsibilities of a councillor and various other positions held (such as the Leader, Committee Chairs, etc). These are included in Part 28 of the Constitution.

9. OFFICERS

9.1 Designations

9.1.1 By law the Council must designate officers to hold three statutory offices. These are –

- Head of Paid Service
- Monitoring Officer
- Section 151 Officer.

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9.1.2 Under the arrangements for the shared management team with Bromsgrove District Council it has been agreed that the persons appointed to the posts of Monitoring Officer and Section 151 Officer will carry out that function for both authorities.

9.1.3 The Council has appointed a number of Chief Officers.

Each Chief Officer has staff to undertake the tasks of delivering the Council's services and supporting the corporate management of the Council.

9.1.4 To enable the professional and operational work of the Council to be undertaken, Chief Officers have authority delegated to them ('delegated powers') to take a range of decisions on behalf of the Executive Committee and the other Committees, etc. with decision making powers. In turn Chief Officers can empower certain of their staff to exercise delegated powers on their behalf in respect of particular kinds of decisions.

9.2 Delegations

9.2.1 Part 5 sets out the Scheme of Delegation to Officers.

9.3 Financial Regulations

9.3.1 Financial Regulations are set out in Part 14 and establish a framework for the administration and control of the Council's financial affairs.

9.3.2 In essence, the Financial Regulations set out the frameworks for:-

- Financial Administration
- Accounting Systems / Accounting Records
- Audit
- Budget Responsibilities
- Budget Preparation
- Procurement of Works, Goods, Materials and Services
- Payment for Works, Goods, Materials and Services
- Payments to Employees and former Employees
- Income
- Banking
- Borrowings, Other Capital Financing and Investments
- Trustees, Receivers, Appointees and Agents
- Assets
- Insurance
- Ex Gratia Payments
- Preparation of Statutory Financial Statements
- Applications and Claims for Grant or Subsidy.

9.4 Contract Procedure Rules

9.4.1 Part 15 includes the Council's Current Contract Procedure Rules which set the framework for the acquisition and disposal of goods, works and services.

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9.5 Employment Procedures

- 9.5.1 Part 16 of the Constitution sets out the Officer Employment Procedure Rules.
- 9.5.2 In essence, all appointments other than the Chief Executive, Directors and Heads of Service reporting directly to Directors must be made by officers and cannot be made by members.
- 9.5.3 There are specific and procedural rules about appointments of the officers named in paragraph 9.5.2, which are made by an Appointments Panel. An Appointments Panel may also deal with the discipline and dismissal of those officers subject, where necessary, to any procedural or legal restrictions. Any such Panel is set up as and when required, rather than by standing arrangement.

10. CONCLUSION

- 10.1 This Guide seeks to simplify some of the complexities of the Constitution for members and officers of the Council but is not a substitute - reference must be made to the full Constitution for the detailed provisions applicable in any situation or circumstance under discussion. A copy of the Constitution is made available to every member of the Council and officers.
- 10.2 The Head of Legal, Equalities and Democratic Services will always try to help with any point of interpretation of the Constitution.