

PART 2

ARTICLES OF THE CONSTITUTION

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Article 1 – The Constitution

This article sets out the fundamental provisions of the Constitution. It confirms that the Council will act within the law and the provisions of the Constitution. It defines those documents that comprise the Constitution.

1 Powers of the Council

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

The Constitution

- 1.2 This Constitution is the Constitution of the Harlow District Council.

- 1.3 The purpose of the Constitution is to:

- (a) enable the Council to provide clear leadership to the community in partnership with citizens, business and other organisations;

- (b) support the active involvement of citizens in the process of local authority decision making;
- (c) help Councillors represent their constituents more effectively;
- (d) enable decisions to be taken efficiently and effectively;
- (e) create a powerful and effective means of holding decision makers to public account;
- (f) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provide a means of improving the delivery of services to the community.

Interpretation and review of the Constitution

- 1.4 Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.
- 1.5 The Council will monitor and evaluate the operation of the Constitution as set out in Article 13.

Article 2 – Members of the Council

This article sets out the composition of the Council, eligibility to stand for election as a Member of the Council and the form of election to be used.

It also deals with the rights and duties of Members, especially as they affect access to land, buildings, documents and information and any confidentiality requirements surrounding the latter.

2.1 Composition and eligibility

Composition

The Council will comprise 33 members, otherwise called Councillors, representing 11 wards. Three Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.

Eligibility

Only registered voters of the District or those living or working there will be eligible to hold the office of Councillor.

2.2 Election and terms of office of Councillors

The ordinary election of a third (or as near as may be) of all Councillors was held on the first Thursday in May in each year beginning in 2006 except that in 2009 and every following fourth year there will be no regular election. The terms of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

2.3 Key roles of Councillors

All Councillors will:

- (a) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions in addition to monitoring and scrutinising the delivery of services and operation of the Council;
- (b) represent their communities and bring their views into the Council's decision making process, that is become the advocate of and for their communities;
- (c) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (d) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances; and respond to constituents' enquiries and representations, fairly and impartially;
- (e) balance different interests identified within the ward and represent the ward as a whole;
- (f) be involved in decision-making as well as the governance and management of the Council;
- (g) be available to represent the Council on other bodies; and
- (h) maintain the highest standards of conduct and ethics.

2.4 Rights and duties

- (a) 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.
- (b) 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.
- (c) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part 4 of the Constitution.
- (d) Every Member of the Council shall have the right to attend and speak at all meetings of committees and sub-committees appointed by the Council and at all working parties or panels established by the Council whether or not the Member is a member of the particular body except for the Standards Committee, and the Licensing and Planning Committee (save for the ability to represent their constituents before the latter two bodies).

2.5 Conduct

Councillors will at all times observe the Councillors’ Code of Conduct and the Officer/Member Protocol set out in Part 5 of the Constitution.

2.6 Allowances

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

Article 3 – Citizens and the Council

3 Citizens’ rights

3.1 Citizens have the right to information and to participate in the democratic process. How this is achieved is explained below and in more detail in the Access to Information Procedure Rules in Part 4 of the Constitution.

- (a) 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 form of Constitution.

- (b) Information: Citizens have the right to:-
 - (i) attend meetings of the Council and its committees except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
 - (ii) see reports and background papers and any record of decisions made by the Council and its committees; and
 - (iii) inspect the Council's accounts and make their views known to the external auditor.
- (c) Participation: Citizens have the right to submit questions to the Council and its committees and contribute to investigations by overview and scrutiny committees.
- (d) Complaints: Citizens have the right to complain to the:-
 - (i) Council itself under its complaints scheme;
 - (ii) Local Government Ombudsman after using the Council's own complaints scheme; and
 - (iii) Standards Committee about a breach of the Councillor's Code of Conduct.

3.2 Citizens' responsibility

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

Article 4 – The Full Council

4 Meanings

- (a) Policy Framework: The policy framework means the following plans and strategies:-
 - (i) those required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and regulations under section 32 of the Local Government Act 2000:-
 - Best Value Performance Plan;

- Sustainable Community Strategy;
- Crime and Disorder Reduction Strategy;
- Local Transport Plan;
- Local Development Plan;
- The Council's Corporate Plan;
- Food Law Enforcement Service Plan; and
- the plan and strategy which comprise the Housing Investment Programme.

(ii) together with such other plans and strategies as the Council may decide from time to time should be adopted by the Council as a matter of local choice.

- (b) Budget: The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure, the setting of virement limits and the retention of reserve funds.
- (c) Housing Land Transfer: Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

4.1 Functions of the Full Council

The Council is the ultimate decision making body of the Authority (subject to any legislative restrictions). The following functions will only be exercised by the Council:-

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;

- (c) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (d) appointing representatives to outside bodies unless the appointment has been delegated by the Council;
- (e) adopting an allowances scheme under Article 2.6;
- (f) changing the name of the area;
- (g) making the appointment of the Head of Paid Service, the Monitoring Officer and the Section 151 Officer;
- (h) making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills; and
- (i) all other matters which by law must be reserved to Council.

4.2 Council meetings

There are three types of Council meetings:-

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

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

Article 5 – Chairing the Council

5 Role and function of Chairman

5.1 The Chairman of the Council will have the following particular roles and functions, together with those otherwise specified in the Constitution:-

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) 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;

- (c) 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 are able to hold the Leader(s) and committee Chairmen to account;
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council; and
- (f) to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

5.2 The Vice-Chairman shall have authority to exercise all the powers of the Chairman however expressed in the Constitution when acting in the absence of the Chairman.

Article 6 – Scrutiny Committee

6 General role

6.1 Within its terms of reference the Scrutiny Committee will:

- (a) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (b) make reports and/or recommendations to Full Council or a policy committee in connection with the discharge of any functions of the Council or on matters that affect the Council's area or the inhabitants of the area; and
- (c) exercise the right to call in for review or scrutiny decisions made but not yet implemented by the Policy Committees and may recommend that the decision be reconsidered by the original decision maker or full Council.

6.2 Specific function

In discharging its terms of reference the Scrutiny Committee may exercise the following roles:-

- (a) Policy development and review:-
 - (i) assist the Council in the development of its budget and policy framework by in-depth analysis of policy issues;

- (ii) conduct research, community and other consultation in the analysis of the policy issues and possible options;
 - (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
 - (iv) question Members of committees and officers about their views on issues and proposals affecting the area; and
 - (v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- (b) Scrutiny:-
- (i) review and scrutinise the decisions made by and performance of committees and Council officers both in relation to individual decisions and over time;
 - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
 - (iii) question Members of committees and officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
 - (iv) make recommendations to the appropriate committee and/or Council arising from the outcome of the scrutiny process; and
 - (v) question and gather evidence from any person (with their consent).

6.3 Proceedings of Scrutiny Committee

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

Article 7 – Policy committees and other committees

7 Responsibility for functions

- 7.1 Under alternative governance arrangements, prescribed by the Local Government Act 2000, as operated by this Council, all functions of the local authority rest with the Council. The implementation of the Council's budget and policy framework and exercise of regulatory functions is undertaken by a limited number of Policy Committees with powers delegated from the Full Council and through officers under the Scheme of Delegation to Officers in Part 3 of the Constitution, Responsibility for Functions.
- 7.2 Guidance issued by the former Department for the Environment, Transport and the Regions indicates that under alternative arrangements there should be no more than five (5) policy committees. This excludes the Standards Committee, overview and scrutiny committees and regulatory committees such as planning and licensing committees. The Council may also establish a committee or committees to deal with personnel and related matters, since this is a Council rather than an executive function. Permanent sub-committees are discouraged.

7.3 Policy and other committees

The Council may appoint such committees with terms of reference, delegations and membership as it deems appropriate. Committees may appoint to their membership co-opted members under arrangements approved by Council. The committees in existence at the time of implementation of this Constitution are:-

Policy committees

Policy and Resources
Environment and Community
Housing

Other committees

Audit and Improvement
Standards
Scrutiny
Planning
Licensing

The detailed responsibilities of all committees are set out in Part 3 of the Constitution, Responsibility for Functions.

Article 8 – Standards Committee

8 Standards Committee

8.1 The Council will establish a Standards Committee.

8.2 Composition

The Standards Committee will be composed of such number of members as determined by the Council including at least two Councillors and at least one person who is not a Councillor or an officer of the Council or any other body having a Standards Committee (the independent member). The independent member(s) will be entitled to vote at meetings of the Standards Committee.

8.3 Role and functions

The Standards Committee will have the following role and functions:-

- (a) promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- (b) assisting the Councillors and co-opted Members to observe the Councillors' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Councillors' Code of Conduct;
- (d) monitoring the operation of the Councillors' Code of Conduct;
- (e) to advise and/or censure a Member or co-opted Member (or former Member or co-opted Member) of the Council;
- (f) advising, training or arranging to train Councillors and co-opted Members;
- (g) granting dispensations to Councillors and co-opted Members from requirements relating to interests set out in the Councillors' Code of Conduct; and
- (h) consider and deal with any reports from a case tribunal or interim case tribunal; any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer of the Standards Board for England to the Monitoring Officer, and any reports otherwise from the Standards Board for England.

Article 9 – Joint arrangements

9 Arrangements to promote well-being

- 9.1 The Council, in order to promote the economic, social or environmental well-being of its area, may:-
- (a) enter into arrangements or agreements with any person or body;
 - (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
 - (c) exercise on behalf of that person or body any functions of that person or body.

Joint arrangements

9.2 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 provide advice to the Council. Such arrangements may involve the appointment of a joint committee with these other local authorities.

9.3 Details of any joint arrangements including any delegation to joint committees will be found in Part 3 of the Constitution, Responsibility for Functions.

Access to information

9.4 The Access to Information Procedure Rules in Part 4 of the Constitution apply to any joint arrangements.

9.5 If the joint committee contains Members who are not in the executive of any participating authority then the access to information rules in Part V A of the Local Government Act 1972 will apply.

Delegation to and from other local authorities

9.6 The Council may delegate functions to another local authority or, in certain circumstances, the executive of another local authority.

9.7 The decision whether or not to accept such delegation from another local authority shall be reserved to the Council.

Article 10 – Officers

10 Management structure

- 10.1 The use of the word “officers” means all employees and staff engaged by the Council to carry out its functions. This word has also been used instead of “employees” to cover those engaged under short term, agency or other non-employed situations.
- 10.2 The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- 10.3 The Council will appoint persons for the following statutory posts: Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151 Officer). The Council will normally designate the following posts as shown, subject to alternative arrangements applying as may be deemed appropriate by the Council from time to time.

Post	Designation
Chief Executive	Head of Paid Service
Head of Legal and Democratic Services	Monitoring Officer
Strategic Director	Chief Finance Officer (Section 151 officer)

The Chief Executive and Strategic Directors will be designated “chief officers”.

Such statutory posts will have the functions described below.

- 10.5 Functions of the Head of Paid Service
- (a) 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 the Constitution.
- (b) 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.

- (c) Restrictions on functions: The Head of Paid Service cannot be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

10.6 Functions of the Monitoring Officer

- (a) The duties of the Monitoring Officer shall be performed by him/her personally, but can be carried out by a deputy appointed by him/her to act in circumstances of sickness or absence.
- (b) 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, officers and the public.
- (c) After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposals or decision being implemented until the report has been considered by Full Council.
- (d) The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (e) The Monitoring Officer will receive and act on reports made by Ethical Standards Officers and decisions of Case Tribunals.
- (f) The Monitoring Officer will conduct investigations into matters referred by Ethical Standards Officers and make reports or recommendations in respect of them to the Standards Committee.
- (g) The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

- (h) The Monitoring Officer shall have access, as necessary, to meetings and be available to be consulted by Members as required.

10.7 Functions of the Chief Finance Officer (Section 151 Officer)

- (a) The duties of the Chief Finance Officer shall be performed by him/her personally, but can be carried out by a deputy appointed by them to act in circumstances of sickness or absence.
- (b) After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council and the Council's external auditor if he/she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (c) The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (d) The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (e) The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Councillors and will support and advise Councillors and officers in their respective roles.
- (f) The Chief Finance Officer will provide financial information to the media, members of the public and the community.
- (g) The Chief Finance Officer shall have access, as necessary to meetings and be available to be consulted by Members as required.

10.8 Duty to provide sufficient resources to Monitoring Officer and Chief Finance Officer

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.

10.9 Conduct

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

10.10 Employment

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

Article 11 – Decision-making

11 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 the Constitution, Responsibility for functions.

11.1 Principles of decision-making

In order to give effect to and promote the policies, plans and strategies of the Council contained in the Policy Framework (Article 4) 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; and
- (e) clarity of aims and desired outcomes.

11.2 Decision-making by the Full Council

Subject to Article 11.6, Council will follow the Council Procedure Rules set out in Part 4 of the Constitution when considering any matter.

11.3 Decision-making by the Scrutiny Committee

The Scrutiny Committee will follow the Scrutiny Procedures Rules set out in Part 4 of the Constitution when considering any matter.

11.4 Decision-making by committees and sub-committees established by the Council

Subject to Article 11.6 Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of the Constitution as apply to them.

11.5 Decision-making by Council bodies acting as tribunals

The Council, a Councillor or an officer acting as a tribunal or in 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.

11.6 Urgent decisions

- (a) Where urgent matters need to be dealt with and time does not allow for convening a meeting of Council or a committee, executive power is and shall be vested in the Chief Executive (or in his absence each Strategic Director in consultation with either Joint Leader of the Council and the Chairman of the committee with the relevant service portfolio or for planning matters, the Planning Committee Chairman.
- (b) No decision shall be made or instructions issued under this Article 11.6 which are contrary to an expressed resolution of the Council or an established practice.
- (c) A report of all decisions taken under this Article 11.6 shall be made to the next meeting of Council or the relevant committee as appropriate.

Article 12 – Finance, contracts and legal matters

12 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 of the Constitution and be subject to independent review by Internal Audit in accordance with the Internal Audit Charter adopted by the Council as set out in Part 5 of the Constitution.

12.1 Contracts

Every contract made by the Council will comply with the Standing Orders relating to Contracts set out in Part 4 of the Constitution.

12.2 Legal proceedings

The Head of Legal and Democratic Services is authorised to institute, defend, settle 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 he/she considers that such action is necessary to protect the Council's interests.

12.3 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 Democratic Services or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

12.4 Common Seal of the Council

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

- (c) An entry of every sealing of a document shall be made, and consecutively numbered, in a book provided for this purpose and shall be signed by the person(s) who have attested the Seal.

Article 13 – Review and revision of the Constitution

13 Duty to monitor and review the Constitution

The Head of Legal and Democratic Services as 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.

13.1 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:-

- (a) observe meetings of different parts of the Member and officer structure;
- (b) undertake an audit trail of sample decisions;
- (c) record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders; and
- (d) compare practices in this authority with those in other comparable authorities, or national examples of best practice.

13.2 Changes to the Constitution

Changes to the policy aspects of the Constitution can only be approved by the Full Council following receipt of a report from the Audit and Improvement Committee, however the Head of Legal and Democratic Services has the authority to make editing and consistency changes after referral to the Constitution Working Group.

Article 14 – Suspension, interpretation and publication of the Constitution

14 14.1 Suspension

- (a) Limit to suspension: The Articles of the Constitution may not be suspended. The Rules specified below may be suspended by the Full Council to the extent permitted within those rules and the law.
- (b) Procedure to suspend: A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) Rules capable of suspension: The following rules may be suspended in accordance with Article 14:

Council Procedure Rules (Part 4 of the Constitution) all, except Rules 22.5 and 23.2.

14.2 Interpretation

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

14.3 Publication

- (a) The Head of Legal and Democratic Services will make available a copy of the Constitution to each Member of the Council upon delivery to him/her of that individual's declaration of acceptance of office on the Member first being elected to the Council; this may be in electronic or paper format.
- (b) The Head of Legal and Democratic Services will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations and on the Council's website; and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Head of Legal and Democratic Services will ensure that the Summary and Explanation of the Constitution is made widely available within the Harlow area and as necessary on the Council website and ensure that it is updated.