



Hertfordshire
COUNTY COUNCIL

CONSTITUTION

**ADOPTED BY THE COUNTY COUNCIL ON 24 MAY 2005
AMENDED JULY AND NOVEMBER 2006**

HERTFORDSHIRE COUNTY COUNCIL

CONSTITUTION

This is the Constitution of Hertfordshire County Council. It sets out the rules under which the Council conducts its business. It aims to:

- enable the Council to provide clear leadership to the community in partnership with the public, businesses and other organisations
- support the active involvement of members of the public in decision-making
- help Councillors represent their constituents
- enable decisions to be taken efficiently and effectively
- enable decision-makers to be held to account
- ensure that decision-makers are identifiable and that reasons are given for decisions.

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SECTION 1 - SUMMARY

1.1 How the Council Operates

The Council is composed of 77 Councillors elected every 4 years. Each Councillor represents an area of the County called an electoral division, and has a special duty to represent the interests of people in that division. The overriding duty of Councillors however is owed to the whole County.

Councillors must agree to follow a Code of Conduct in the way they carry out their duties (Annex 18). There is a Standards Committee which trains and advises them on the Code.

All Councillors meet together at full Council Meetings when decisions are taken on the Council's overall policies and the budget. Meetings are open to the public. Members of the public are able to ask questions of leading Councillors.

1.2 How Decisions are Made

The Executive is that part of the Council which is responsible for most decisions on how the Council's services are run. The Executive is made up of the Leader of the Council and a Cabinet of up to 9 Councillors. The Executive delegates responsibility for many day-to-day decisions to officers, but still retains overall responsibility for them. When major decisions are to be made, they are published in the Forward Plan. When the Executive meet to take decisions, the public can attend unless personal or confidential matters are being discussed.

The Executive cannot take decisions which are out of line with the overall policies or budget agreed by the full Council.

The Executive can set up Cabinet Panels which help it develop policy.

1.3 Overview and Scrutiny

There is a system of scrutiny which supports the work of the Executive and Council. Decisions of the Executive are monitored and decisions can be called in before they are implemented. The Executive can also consult through the scrutiny system. The scrutiny process is open to the public except when personal or confidential matters are being discussed. Members of the public may present petitions to the appropriate scrutiny committee and may also ask to be able to contribute to the debate.

1.4 The Council's Staff

The Council's staff (called "officers") give advice to Councillors and take day-to-day decisions on the running of services. The Council has a Monitoring Officer and a Chief Finance Officer who are legally responsible for ensuring that the Council acts within the law and uses its resources wisely. There is a protocol which governs the relationship between Councillors and officers (Annex 16). A key point in it is that all officers must be politically neutral and must provide support to all members of the Council.

SECTION 2 - MEMBERS OF THE COUNCIL

2.1 Composition

The Council comprises 77 Councillors. One Councillor is elected by the voters of each electoral division in the County.

Only registered voters of the County or those living or working there are eligible to be elected as Councillors.

2.2 Election and Terms of Office

The ordinary election of Councillors is held on the first Thursday in May every 4 years. Councillors cease to hold office on the 4th day after the next ordinary election.

Where a Councillor dies, resigns or becomes disqualified, a by-election is held to fill his or her place on the Council for the remainder of the original term of office; unless the vacancy occurs within 6 months of the next ordinary election.

2.3 Roles & Functions of all Councillors

a) Key roles

All Councillors will:

- Acting together in full Council, be responsible for major policies and the budget
- Contribute to the good governance of the County and actively encourage the public to participate in decision-making
- Represent the interests of their electoral division
- Maintain the highest standards of conduct and ethics.

b) Rights and Duties

- Councillors have a right of access to information held by the Council in order to carry out their duties as Councillors
- Councillors will not make public information which is confidential or exempt (see the Access to Information Rules in Annex 4) without the agreement of the Council; or divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.

2.4 Conduct

Councillors will at all times observe the Protocol for Relationships between Councillors and Officers and the Code of Conduct for Councillors set out in Annexes 16 and 18.

2.5 Allowances

Councillors are entitled to receive allowances in accordance with the Scheme set out in Annex 15.

SECTION 3 - THE COUNCIL AND THE PUBLIC

3.1 Rights

Members of the public in Hertfordshire have the following rights in relation to the Council

- a) Voting. If they are on the electoral roll, the right to vote in Council elections; the right to sign a petition to request a referendum for an elected Mayor form of Constitution; and the right to vote in such a referendum.
- b) Information. The right to
 - (i) attend meetings of the Council, Executive, Scrutiny Committees, Panels, topic groups and other member bodies, except where confidential or exempt information may be disclosed
 - (ii) find out from the Forward Plan what Key Decisions will be taken by or on behalf of the Executive and when
 - (iii) see reports and background papers and any records of decisions made by the Council and the Executive
 - (iv) request any information held by the Council under the Freedom of Information Act 2000
 - (v) inspect the Council's accounts and make their views known to the external auditor.
- c) Participation. The right to:
 - (i) question the Leader and Executive Members at Council Meetings
 - (ii) present petitions at Council and Scrutiny Committee Meetings
- d) Complaints. The right to complain to:
 - (i) the Council under its own Complaints Procedure
 - (ii) the Local Government Ombudsman after using the Council's own procedure
 - (iii) the Standards Board for England about a breach of the Code of Conduct for Councillors.

3.2 Responsibilities

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

SECTION 4 - THE COUNCIL MEETING

4.1 Functions of the Full Council

4.1.1 The full Council approves or adopts the following plans, strategies and documents:

- a) Community Strategy
- b) Corporate Plan (incorporating Best Value Performance Plan)
- c) Development Plan Documents and proposals in connection with the preparation of altered or replacement Documents
- d) Children and Young Peoples Plan
- e) Local Transport Plan
- f) School Admission Arrangements

which are together referred to as 'the policy framework'.

4.1.2 The full Council approves the budget, including the allocation of financial resources to different services and projects; contingency plans; the Council tax base; setting the Council tax; decisions relating to the Council's overall borrowing requirements; the control of capital expenditure and the setting of virement limits. The procedures under which these matters are dealt with are set out in the Financial Regulations in Annex 12.

4.1.3 The full Council:

- a) appoints the Leader of the Council
- b) approves the terms of reference for committees and makes appointments to them (such appointments may also be made by the County Secretary under delegated powers)
- c) appoints representatives to outside bodies (such appointments may also be made by the County Secretary under delegated powers)
- d) adopts the Scheme for Members' Allowances
- e) approves the appointment of Head of Paid Service
- f) makes by laws and promotes or opposes any local legislation
- g) is responsible for the "local choice" functions set out in Annex 3.
- h) is responsible for any other matters which by law are reserved to it.

4.2 Council Meetings

There are 3 types of Council meeting:

- a) the Annual Meeting
- b) ordinary meetings

c) extraordinary meetings

and they are conducted in accordance with the Standing Orders for Council Meetings set out in Annex 6.

4.3 Responsibility for Functions

The Council maintains in Annex 3 information about the responsibility for Council functions which are not the responsibility of the Executive.

SECTION 5 - CHAIRING THE COUNCIL

- 5.1 The Chairman of the Council is elected by the Council at the Annual Meeting and holds office until the election of his or her successor. The Chairman has the following functions:
- a) to preside over meetings of the Council to ensure that its business is conducted efficiently and in accordance with the law and the Constitution
 - b) to represent the Council at official events in accordance with the Protocol for Appointments and other Procedural matters set out in Annex 20.
- 5.2 In the absence of the Chairman, the Vice-Chairman of the Council carries out these functions.
- 5.3 The Chairman (or Vice-Chairman) is expected to use the casting vote at Council meetings to ensure that an administration's proposals are adopted.

SECTION 6 - OVERVIEW AND SCRUTINY OF DECISIONS - SCRUTINY COMMITTEES

- 6.1 The Council carries out its duty under the Local Government Act 2000 to appoint Overview & Scrutiny Committees by appointing the Scrutiny Committees set out in Annex 8.
- 6.2 The terms of reference and membership of each Scrutiny Committee are as set out in Annex 8.
- 6.3 Each Scrutiny Committee has power to:
- a) review or scrutinise decisions made in connection with the discharge of any functions whether or not they are the responsibility of the Executive
 - b) report and make recommendations in accordance with Standing Orders with respect to the discharge of any functions whether or not they are the responsibility of the Executive
 - c) report or make recommendations in accordance with Standing Orders on matters which affect the County or its inhabitants
 - d) recommend that a decision which is the responsibility of the Executive which has been taken but not implemented be reconsidered by the decision maker
 - e) refer to the Council for review or scrutiny a decision which is the responsibility of the Executive and which has been taken but not implemented.

For the avoidance of doubt, each Scrutiny Committee's powers include the power to review or scrutinise the operation of any policy of the Council and to make recommendations thereon.

- 6.4 The Executive's Forward Plan, containing details of all matters likely to be the subject of key decisions, shall be made available to all members of Scrutiny Committees at least 14 days prior to the first day upon which the Forward Plan comes into effect.
- 6.5 Any member of a Scrutiny Committee may require that a matter which is relevant to the functions of the Committee be included on the agenda for, and discussed at, a meeting of the Committee.
- 6.6 Each Scrutiny Committee may appoint time-limited Topic Groups to deal with particular matters within their remit.
- 6.7 No member of the Executive shall be a member of a Scrutiny Committee or a Topic Group thereof.
- 6.8 Each Scrutiny Committee (or Topic Group thereof) may require members of the Executive and officers to attend before them to answer questions. It is the duty of a member to comply with any such requirement. Each Scrutiny Committee may invite other persons to attend its meetings.
- 6.9 Scrutiny Committees conduct their proceedings in accordance with the Standing Orders for Scrutiny Committees set out in Annex 9 and shall have regard to the Guidelines for Scrutiny Committees set out in Annex 9A.

SECTION 7 - THE EXECUTIVE

7.1 Role

The Executive exercises all of the Council's functions which are not the specific responsibility of any other part of the Council.

7.2 Form & Composition

7.2.1 The Executive is a Leader and Cabinet Executive, consisting of

- a) a County Councillor elected as Leader by the Council; and
- b) between 2 and 9 County Councillors appointed to the Executive by the Leader.

7.2.2 The Leader is appointed by the Council at the first Annual Meeting following the ordinary election of County Councillors and holds office for the period ending with the day of the next ordinary election of County Councillors unless within that period the Leader:

- a) resigns from the office of Leader by giving notice in writing to the County Secretary or
- b) is suspended from being a Councillor under Part III of the Local Government Act 2000 (but shall resume office at the end of the suspension) or
- c) ceases to be a County Councillor or
- d) is removed from the office of Leader by resolution of the Council.

7.2.3 Upon the occurrence of a vacancy in the office of the Leader, the Council shall fill the vacancy at the next ordinary meeting of the Council, or at an extraordinary meeting summoned for the purpose or, if the vacancy occurs as a result of removal of the Leader by resolution of the Council, at the meeting at which that resolution was passed. The person appointed to fill the vacancy shall hold office for the remainder of the original term subject to earlier termination under 7.2.2.

7.2.4 The Leader may nominate another member of the Executive to act during any period of absence.

7.2.5 Members of the Executive other than the Leader are appointed by the Leader who shall give written notice of the appointment to the County Secretary. They hold office for the period ending with the day of the next ordinary election of County Councillors unless within that period:

- a) they resign from office by giving notice in writing to the Leader, copied to the County Secretary
- b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension)

- c) they cease to be County Councillors
- d) the County Secretary receives a written notice of removal signed by the Leader.

7.2.6 A Register of Members of the Executive is set out in Annex 2.

7.3 Proceedings of the Executive

Proceedings of the Executive shall take place in accordance with the Standing Orders for the Executive set out in Annex 7.

7.4 Responsibility for Functions

- a) The Executive, acting collectively, is responsible for all the functions of the Council which are not allocated to the Council itself or another part of the Council by law or by this Constitution.
- b) Individual members of the Executive may be allocated portfolios by the Leader. A member with such a portfolio in relation to a particular area of the Council's work shall, in relation to that work, have the following functions:
 - to oversee the development and implementation of policy
 - to propose an appropriate course of action when a matter comes before the Executive for decision
 - to be consulted by officers before decisions are taken by them under powers delegated from the Executive
 - to attend meetings of relevant Scrutiny Committees to assist with scrutiny.
- c) The Leader shall notify the County Secretary in writing of the allocation of a portfolio to a member of the Executive, and of any change to a portfolio.
- d) Executive functions are delegated to officers as set out in Annex 3, part 3.
- e) The functions of the Executive in relation to the following activities of the Fire and Rescue Service are delegated to a Joint Committee of Fire Authorities in the Eastern Region, called the Regional Management Board:-
 - (i) ensuring resilience to emergencies, especially potential chemical, biological, radiological or nuclear attack,
 - (ii) specialist common services, where appropriate, such as fire investigation,
 - (iii) establishing regional control rooms,
 - (iv) introducing regional-based procurement or procurement to national standards,
 - (v) developing regional training strategies and delivery,

- (vi) introducing regional personnel management and human resources management functions.

7.5 Cabinet Panels

The Executive may establish Cabinet Panels (to which the rules of political proportionality shall apply) to assist it in drawing up proposals for policy development. Proceedings of Cabinet Panels shall take place in accordance with the Guidelines for Panels set out in Annex 10.

SECTION 8 - REGULATORY & OTHER COMMITTEES

8.1 Development Control Committee

The Council establishes the Development Control Committee with the membership specified in Annex 3, part 2.2 and delegates to it the power to discharge the functions specified there.

8.2 Casework Appointments and Appeals Committee

The Council establishes the Casework Appointments & Appeals Committee with the membership specified in Annex 3, part 2.3, and delegates to it the power to discharge the functions specified there.

8.3 Investment Committee

The Council establishes an Investment Committee with a membership specified in Annex 3 part 2.4 and delegates to it the power to exercise the Council's functions in relation to the Local Government Pension Scheme and the Fireman's Pension Scheme.

8.4 Audit Committee

The Council establishes an Audit Committee with a membership specified in Annex 3 paragraph 2.5, and delegates to them the power to discharge the functions specified there.

8.5 Standing Orders

Standing Orders for the Committees in this section are set out in Annex 1.

SECTION 9 - THE STANDARDS COMMITTEE

9.1 Composition

The Council appoints a Standards Committee which consists of:

- (i) two Councillors neither of whom shall be a member of the Executive
- (ii) four independent members appointed following public advertisement.

9.2 Role

The Standards Committee is responsible for:

- a) promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives
- b) advising the Council on the adoption or revision of the Councillors' Code of Conduct
- c) assisting Councillors, co-opted members and church and parent governor representatives to observe the Code
- d) monitoring the operation of the Code
- e) advising training or arranging to train Councillors co-opted members and church and parent governor representatives on matters relating to the Code.
- f) granting dispensations from requirements relating to interests set out in the Code
- g) conducting hearings in respect of complaints which have been investigated by an Ethical Standards Officer (ESO) where that officer has referred the report of the investigation to the Monitoring Officer.
- h) conducting hearings in respect of complaints which have been investigated by the Monitoring Officer following referral of the complaint by an ESO.
- i) dealing with reports from a case tribunal, or from the Monitoring Officer on any matter referred by an ESO.

9.3 Chairman

The Chairman of the Standards Committee is appointed by the Committee from among the 4 independent members.

9.4 Procedures

The proceedings of the Standards Committee shall be as determined by the Local Government Act 2000 and Regulations and Guidance made thereunder; and otherwise as determined by the Committee itself.

9.5 Reports

The Standards Committee has power to report, with recommendations, to the Council or Executive at such times and in such manner as it thinks fit.

SECTION 10 - OFFICERS**10.1 Management Structure**

a) The Council appoints a Chief Executive and Chief Officers as follows:

| <u>Post</u> | <u>Principal areas of responsibility</u> |
|---|---|
| Chief Executive | <ul style="list-style-type: none"> • Overall corporate management and operational responsibility, including overall management responsibility for all officers. • Lead policy adviser to the Council and Executive. |
| Director of Children, Schools & Families | Services for children, including schools; public libraries, archives and cultural services. |
| Director of Adult Care Services | Services for adults in need of support and assistance; reduction of crime, disorder and drugs misuse. |
| Director of Environment | Services in respect of planning, highways, waste management, traffic regulation, public transport the Green Belt estate and tourism. |
| Director of Commercial Services and Information | The Council's commercial activities, Hertfordshire Business Services; information technology. |
| Chief Fire Officer | The Fire & Rescue Service. |
| Finance Director | The proper administration of the Council's financial affairs. |
| Corporate Director (People & Property) | Overall responsibility for personnel and property management. |
| County Secretary | Legal and Committee Services; Coroners Service; Registration of Births, Deaths & Marriages; trading standards. |

b) The Council's Departmental Management Structure is shown in Annex 19.

10.2 Statutory Officers

The Council designates the following posts as shown:

| <u>Post</u> | <u>Designation</u> |
|---------------------------------|-----------------------------------|
| Chief Executive | Head of Paid Service |
| County Secretary | Monitoring Officer |
| Finance Director | Chief Finance Officer |
| Director of Adult Care Services | Director of Adult Social Services |

Director of Children Schools & Families
Assistant Director of Environment -
Transport Management

Director of Children's Services
Traffic Manager

10.3 Functions of the Head of Paid Service

To be responsible for, and report to the Council on, the manner in which the discharge of the Council's functions is co-ordinated; the number and grade of officers; and the overall management structure.

10.4 Functions of the Monitoring Officer

- a) To maintain the Constitution in an up-to-date form and ensure it is widely available.
- b) To ensure that decisions are lawful and fair and, after consultation with the Head of Paid Service and Chief Finance Officer, report to the Council (or Executive) if any proposal or decision would give rise to unlawfulness or maladministration.
- c) To support the Standards Committee.
- d) To receive and act on reports and references from ethical standards officers and case tribunals.
- e) To ensure that the Access to Information rules are complied with.
- f) To advise whether executive decisions are in accordance with the budget and policy framework; and generally give advice on the scope of powers to take decisions, maladministration, financial impropriety, probity and budget & policy framework issues to all Councillors.

10.5 Functions of the Chief Finance Officer

- a) To be responsible for the good administration of the Council's financial affairs.
- b) To ensure that decisions are financially prudent and, after consultation with the Head of Paid Service and Monitoring Officer, report to the Council (or Executive) if any proposal or decision would give rise to unlawful expenditure.
- c) To advise Councillors on the scope of powers to take decisions, maladministration, financial impropriety, probity and budget & policy framework issues.

10.6 Conduct

Officers must comply with the Protocol for Relationships Between Councillors and Officers and the Code of Conduct for Officers set out in Annexes 16 and 17.

- 10.7** The recruitment, selection and dismissal of officers will comply with Officer Employment Procedures Rules set out in Annex 14.

SECTION 11 - DECISION MAKING

11.1 Responsibility for decision making

The Council will issue and keep up to date a record of what person or body within the Council has responsibility for particular types of decisions. This record is set out in Annex 3.

11.2 Principles of decision making

The Council observes the following principles of decision-making:

- a) compliance with the law
- b) proportionality – the action taken must be proportionate to the desired outcome
- c) due consultation and the taking of professional advice from officers
- d) respect for human rights
- e) in the case of key decisions, describing options and giving reasons.

11.3 Types of Decision

- a) Decisions made by the full Council are listed in Section 4.1 and will not be delegated except as indicated in that Section.
- b) Key Decisions are decisions which are likely:
 - (i) to result in the Council incurring expenditure (or making savings) which are significant having regard to the Council's budget for the service concerned; or
 - (ii) to be significant in terms of the effect on communities living or working within two or more electoral divisions.

The Council will regard a decision as being a Key Decision under (i) above if the expenditure or savings concerned exceeds £500,000.

A decision taker may only take a Key Decision in accordance with the Access to Information Rules Standing Orders set out in Annex 4 rules 9-12.

SECTION 12 - FINANCE, CONTRACTS AND LEGAL MATTERS

12.1 Financial Management

The Council conducts its financial affairs in accordance with the Financial Regulations set out in Annex 12.

12.2 Contracts

The Council complies with the Contract Regulations set out in Annex 13 when entering into contracts.

12.3 Legal Proceedings

The County Secretary is authorised to institute, defend, withdraw or compromise any legal proceedings; and also to make payments to remedy maladministration.

12.4 Authorisation of Documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council it may be signed by the County Secretary, or other person authorised by the Council or another officer or person authorised by the County Secretary.

12.5 Common Seal

The County Secretary has custody of the Common Seal. A decision of, or on behalf of, the Council is sufficient authority for sealing any document necessary to give effect to that decision. The Common Seal will be affixed to those documents which in the opinion of the County Secretary should be sealed. The affixing of the Common Seal will be attested by the County Secretary or another officer authorised by the County Secretary.

SECTION 13 - REVIEW AND REVISION OF THE CONSTITUTION

13.1 Duty to Monitor and Review the Constitution

The County Secretary will monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect.

13.2 Changes to the Constitution

The County Secretary may make changes to the Constitution which are necessary in order to comply with the law, which shall be notified to the Council at its next meeting. Otherwise, changes to the Constitution may only be approved by the full Council after consideration of a report by the County Secretary which will identify whether any legal requirements need to be met, or consultation undertaken, before the changes can be made.

SECTION 14 - INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

14.1 Interpretation

The ruling of the Chairman of the Council on the interpretation of the Constitution or on any proceedings of the Council shall not be challenged at any meeting of the Council. Before giving any such ruling the Chairman shall take advice from the County Secretary.

14.2 Publication

- a) The County Secretary will ensure that the Constitution is made available to each Councillor, in printed form and electronically, as soon as reasonably practicable after it is adopted by the Council; and to each new Councillor as soon as reasonably practicable after their election.
- b) The County Secretary will ensure that the Constitution is available on the Council's website and in libraries; and can be bought by the public for a reasonable fee.