

TONBRIDGE AND MALLING BOROUGH COUNCIL

CONSTITUTION

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(Draft: April 2018)

ARTICLE 1 – THE CONSTITUTION

1.01 Powers of the Council

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

1.02 The Constitution

This Constitution, and all its appendices, is the Constitution of the Tonbridge & Malling Borough Council.

1.03 Purpose of the Constitution

The Council sees Tonbridge and Malling's future as a financially sustainable Council that delivers good value services, provides strong and clear leadership and, with our partners, addresses the needs of our Borough.

The purpose of the Constitution is to help the Council realise this Vision by:

1. enabling the Council to provide clear leadership to the community, working in partnership with citizens, businesses and other organisations to promote the best interests of the borough and its people;
2. supporting the active involvement of citizens in the process of local authority decision-making;
3. helping councillors represent their constituents more effectively;
4. enabling decisions to be taken efficiently and effectively, in a transparent and accountable manner;
5. creating powerful and effective means of holding decision-makers to public account;
6. ensuring that decisions are subject to effective scrutiny and that no one will review or scrutinise a decision in which they were directly involved;
7. ensuring that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. providing a means of securing best value for the community in the delivery of services.

1.04 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option it thinks is closest to the purposes stated above. Any dispute as to the interpretation of the Constitution should be referred in the first instance to the Chief Executive who, if unable to resolve the dispute satisfactorily, will report the matter to the Council for resolution.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 10.

1.05 Statutory Provisions

Many of the provisions of this Constitution summarise detailed statutory provisions; for a fully authoritative view, reference should be made to the original legislation. In the event of any conflict, the statutory position will prevail.

ARTICLE 2 – MEMBERS OF THE COUNCIL

2.01 Composition and Eligibility

- (a) **Composition.** The Council will comprise 54 members, otherwise called councillors. One or more councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Boundary Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only qualifying Commonwealth, Republic of Ireland or EU citizens who are over 18 and:
- registered local government electors of the Borough; or
 - living, working or occupying land as an owner or tenant there (at the time when nominations are made for candidates for election and for the previous 12 months)

will be eligible to hold the office of councillor.

2.02 Election and terms of councillors

The regular election of all councillors will be held on the first Thursday in May every four years. The terms of office of councillors will start on the fourth day after being elected and finish on the fourth day after the date of the regular election four years later.

2.03 Roles and functions of all councillors

(a) Key roles

All Councillors will:

- (i) collectively be the ultimate policy makers and carry out a number of strategic and corporate management functions;
- (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
- (iii) represent their communities and bring their views into the Council's decision-making processes, ie become the advocate of and for their communities;
- (iv) be involved in decision-making, including attending relevant member training for the committees and bodies on which they sit;

- (v) maintain the highest standards of conduct and ethics;
- (vi) balance different interests identified within the ward and represent the ward as a whole;
- (vii) participate in the governance and management of the Council;
- (viii) be available to represent the Council on other bodies;
- (ix) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances; and
- (x) respond to constituents' enquiries and representations, fairly and impartially.

(b) Rights and duties

- (i) Councillors will have rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
- (ii) Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a councillor or officer entitled to know it.

(For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules in Part 4 of this Constitution.)

2.04 Conduct

Councillors will at all times observe the Members' Code of Conduct and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

2.05 Allowances

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

ARTICLE 3 – CITIZENS AND THE COUNCIL

3.01 Citizens' rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting and petitions.** Citizens on the electoral roll for the Borough have the right to vote and to sign a petition to request a referendum for an elected mayor form of Constitution.
- (b) **Information.** Citizens have the right to:
 - (i) obtain a copy of the constitution;
 - (ii) attend meetings of the Council, the Cabinet and committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
 - (iii) find out from the Notice of Forthcoming Key Decisions what key decisions will be taken by the executive and when;
 - (iv) inspect reports and background papers, and any records of decisions made by the Council, its committees and the executive, except where confidential or exempt information is likely to be disclosed; and
 - (v) inspect the Council's accounts and make their views known to the external auditor.
- (c) **Participation.** Citizens have the right to:
 - (i) contact their local councillor about any matters of concern to them;
 - (ii) participate in Council meetings by asking questions;
 - (iii) contribute to investigations by the Overview & Scrutiny Committee;
 - (iv) Petition the Council on matters of local concern

(d) Complaints. Citizens have the right to complain to:

- (i) The Council itself under its complaints scheme about the standard of service, actions or inaction by the Council or its staff; unfair treatment or other allegations of maladministration;
- (ii) The Local Government and Social Care Ombudsman after using the Council's own complaints scheme;
- (iii) The Monitoring Officer about a breach of the Councillor's Code of Conduct.

3.02 Citizens Responsibilities

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

4.01 Meanings

- (a) **Policy Framework.** The Policy Framework means the following plans and strategies:
- (i) those required by law to be adopted by the Council. These include:
 - Community Safety Partnership Plan
 - Children and Young People’s Plan
 - Youth Justice Plan
 - Plans and strategies which together comprise the Development Plan
 - Statement of Licensing Policy under the Licensing Act 2003
 - Gambling Act 2005: Statement of Principles
 - Pay Policy Statement
 - (ii) Those which the Council has decided should be adopted by the Council meeting as a matter of local choice:
 - Corporate Strategy (or its equivalent)
 - Equality Policy Statement
 - Health and Safety Policy
- (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 (including the Capital Strategy) and the setting of virement limits.

4.02 Functions of the Full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution (except where the Monitoring Officer exercises his delegated authority to make necessary amendments to give effect to decisions of the Council, Cabinet or a Committee);
- (b) approving and adopting the policy framework and the budget;
- (c) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;
- (d) appointing the Leader
- (e) agreeing and/or amending the terms of reference for committees, deciding on their composition and making appointments to them;
- (f) appointing representatives to outside bodies;
- (g) adopting a scheme of Members' Allowances;
- (h) changing the name of the area, conferring the title of Honorary Alderman or Freedom of the Borough;
- (i) confirming the appointment of the Head of Paid Service;
- (j) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (k) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself (unless delegated to committees, sub-committees or officers) rather than the executive; and
- (l) all other matters which, by law, must be reserved to Council.

(4.03) Council Meetings

There are four types of Council Meeting:

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

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

ARTICLE 5 – CHAIRING THE COUNCIL

5.01 Role and function of the Mayor

The Mayor and Deputy Mayor will be elected by the Council annually. The Mayor (and, in his/her absence, the Deputy Mayor) will have the following principal responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on the executive are able to hold the executive to account;
4. to promote public involvement in the Council's activities;
5. to act with impartiality when discharging all Mayoral roles and responsibilities;
6. to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

(NB. In accordance with the provisions of the Local Government Act 2000 neither the Mayor nor the Deputy Mayor can be a member of the Executive.)

ARTICLE 6 – THE EXECUTIVE

(LEADER WITH CABINET)

6.01 Role

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

6.02 Form and Composition

The executive will consist of the Leader, Deputy Leader together with at least 1, but not more than 8, councillors appointed to the executive by the Leader

6.03 Leader

The Leader will be a councillor elected to that position by the Council at the post-election annual meeting. The leader will normally hold office for a four year period i.e. until the day of the next post-election annual meeting of the Council, when he/she may seek re-election, or until:

- (a) he/she resigns from the office; or
- (b) he/she is removed from office by resolution of the Council.

6.04 Deputy Executive Leader

The Leader shall appoint a Deputy Leader. If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader shall act in the Leader's place.

Unless they resign or cease to be a member, the person who is appointed as Deputy Leader will hold office until the end of any term of office of the Leader. Where a vacancy occurs in the office of Deputy Leader, the Leader shall appoint another person to undertake the role.

The Leader may, if they think fit, remove the Deputy Leader from office.

6.05 Other Executive Members

Only councillors shall be appointed to the executive; there shall be no co-optees and (save for the provisions of 6.04 above) no deputies or substitutes for executive members. Neither the Mayor nor Deputy Mayor of the Council shall be appointed to the executive.

Other executive members shall be appointed annually by the Leader. They will normally hold office until the next annual meeting of the Council, when they may be re-appointed, or until:

- (a) they resign from office; or
- (b) they are no longer councillors; or
- (c) they are removed from office, either individually or collectively, by resolution of the Council

6.06 Proceedings of the Executive

Proceedings of the executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.

6.07 Responsibility for Functions

The Leader will recommend for adoption by Council annually a list in Part 3 of this Constitution setting out which individual members of the executive, committees of the executive, officers or joint arrangements are responsible for the exercise of particular executive functions.

6.08 Political Balance

The political balance requirements of Section 15 of the Local Government & Housing Act 1989 do not apply to the composition of the executive, nor to any Committee of the executive.

ARTICLE 7 – JOINT ARRANGEMENTS

7.01 Arrangements to Promote Well Being

The Council or the Executive, 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.

7.02 Joint Arrangements

- (a) The Council may establish joint arrangements with one or more local authorities to exercise functions which are not executive functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of joint committees with these other local authorities
- (b) The executive may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities
- (c) Except as set out below, the executive may only appoint executive members to a joint committee exercising executive functions and those members need not reflect the political composition of the local authority as a whole
- (d) The executive may appoint members to a joint committee from outside the executive where the joint committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the executive may appoint to the joint committee any councillor who is a member for a ward which is wholly or partly contained within the area

(The political balance requirements do not apply to such appointments)
- (e) Details of any joint arrangements including any delegations to joint committees will be found in the Council's scheme of delegations in Part 3 of this Constitution

7.03 Access to information

- (a) If all the members of a joint committee are members of the executive in each of the participating authorities then its access to information regime is the same as that applied to the executive
- (b) If the joint committee contains members who are not on the executive of any participating authority then the access to information rules in the Local Government Act 1972 will apply

7.04 Delegation to and from other local authorities

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

7.05 Contracting out

The executive may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under the relevant statutory requirements e.g. the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

ARTICLE 8 – DECISION MAKING

8.01 Responsibility for Decision Making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of the Constitution.

8.02 Principles of Decision Making

Under the Constitution decisions are likely to be taken by the full Council, the Executive (collectively and/or by individual members of the Executive), committees and sub-committees, and by officers. Whichever body or individual is responsible for taking a decision, all decisions of the Council will be made in accordance with the following principles:-

- decisions should be taken reasonably, with regard to relevant considerations and ignoring irrelevant factors;
- realistic alternatives should be evaluated prior to decisions being taken;
- there should be a presumption in favour of openness and transparency with members of the public being afforded effective access to relevant information and the processes by which decisions are taken;
- due consultation should take place with those likely to be affected by a decision, especially where the decision is likely to have a wide ranging or significant impact on the community;
- decision making should, so far as practicable, be planned in advance with due public notification of forthcoming decisions;
- decisions should have regard to proportionality – ie the action must be proportionate to the desired outcome;
- appropriate professional advice should be obtained from suitably qualified officers of the authority;
- decisions should be taken on the basis of clear aims and desired outcomes from the resultant actions;
- decisions should have regard to relevant approved policies and adopted procedures of the Council; they must be lawful, and sufficient budgetary provision should exist;
- decisions taken must be formally recorded in accordance with the requirements of the Constitution; in respect of executive decisions, the

formal record should state what options were considered and give the reasons for the decision taken

In some cases (e.g. where urgent action is necessary or where confidential matters are under discussion) it may not be possible to fully comply with all of the above principles. Decision makers should satisfy themselves that they have been complied with so far as reasonably practicable in the circumstances.

8.03 Types of Decision

- (a) **Decisions reserved to Full Council.** Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not be delegated.
- (b) **Key decisions**

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| (i) | A 'key decision' means an executive decision which is likely either: |
| | <ul style="list-style-type: none"> - to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or - to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the local authority |
| (ii) | A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution. |
| For the purpose of subsection (b) (i) above, the term 'significant' when applied to expenditure or savings shall mean a sum in excess of £250,000 or such other sum as may be specified in any enactment or other statutory provision. | |

8.04 Decision making by the Full Council

The Council meeting will follow the Council and Committee Procedures Rules set out in Part 4 of this Constitution when considering any matter, subject to Article 8.08

08.05 Decision making by the executive

The executive will follow the Executive Procedures Rules set out in Part 4 of this Constitution when considering any matter, subject to Article 8.08

8.06 Decision making by Overview and Scrutiny Committee

Overview and Scrutiny Committee will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

8.07 Decision making by other committees and sub-committees established by the Council

Other Council committees and sub-committees will follow those parts of the Council & Committee Procedures Rules set out in Part 4 of this Constitution as apply to them, subject to Article 8.08

8.08 Decision making by Council bodies acting as tribunals

The Council, a councillor or an officer acting as tribunals or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a lawful procedure which will be made available to all parties.

ARTICLE 9 – FINANCE, CONTRACTS AND LEGAL MATTERS

9.01 Financial Management

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

9.02 Contracts

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

9.03 Legal proceedings

The Director of Central Services and Monitoring Officer is authorised to commence, defend or participate in any legal proceedings (including authority to settle/ compromise/ withdraw) as set out in Part 3 of the Constitution.

9.04 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 Director of Central Services and Monitoring Officer 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.

Any contract entered into on behalf of the Council shall comply with the requirements of the Contract Procedure Rules set out in Part 4 of the Constitution. Such contracts must either be signed by at least two authorised officers of the authority or made under the common seal of the council attested by at least one officer as authorised under paragraph 9.05 below.

9.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Director of Central Services and Monitoring Officer. A decision of the Council, the executive or 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 Director of Central Services and Monitoring Officer, should be sealed. The affixing of the Common Seal will be attested by the Chief Executive or the Director of Central Services and Monitoring Officer or some other person authorised by one of them.

ARTICLE 10 - REVIEW AND REVISION OF THE CONSTITUTION

10.01 Duty to monitor and review the Constitution

The operation of the Constitution will be monitored and reviewed by the Monitoring Officer to ensure that its aims and principles are given full effect.

10.02 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 to better achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

1. observe meetings of different parts of the member and officer structure;
2. undertake an audit trail of a sample of decisions;
3. record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and
4. compare practices in this authority with those in other comparable authorities, or national examples of best practice.

10.03 Changes to the Constitution

- (a) **Approval.** Save as provided by (b) below changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer.
- (b) The Monitoring Officer is authorised to make any necessary amendments to the Constitution -
 - (i) to give effect to any decision of Council, the Executive or a Committee;
 - (ii) consequential upon changes to operational arrangements

ARTICLE 11 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

11.01 Suspension of the Constitution

- (a) **Limit to suspension:** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to suspend:** A motion to suspend any Rules will not be moved without notice unless at least one half of the whole number of councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension:** The Rules specified in Part 4 of this Constitution may be suspended in the following circumstances:
 - (i) where it is considered appropriate in order to facilitate the conduct of meetings or the discharge of the Council's functions; or
 - (ii) in cases of urgency, on the advice of the Head of the Paid Service, Monitoring Officer or Chief Finance Officer.

11.02 Interpretation

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

11.03 Publication of the Constitution

- (a) The Chief Executive will give an electronic copy of this Constitution to each member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the member first being elected to the Council.
- (b) The Chief Executive will ensure that copies are available for view on the Council's website and hard copies can be purchased by members of the local press and the public on payment of a reasonable fee.

SCHEDULE 1: DESCRIPTION OF EXECUTIVE ARRANGEMENTS

The following parts of this Constitution constitute the executive arrangements:

1. The Overview and Scrutiny Procedure Rules (Part 4 – Rules)
2. Article 6 (The Executive) and the Executive Procedure Rules
3. Article 7 (Joint Arrangements)
4. Article 8 (Decision Making) and the Access to Information Procedure Rules
5. Part 3 (Responsibility for Functions)

