

PART 2 – ARTICLES OF THE CONSTITUTION

Article 1 – The Constitution

1.1 POWERS OF THE COUNCIL

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

1.2 THE CONSTITUTION

This Constitution, including all its appendices, is the Constitution of Cheltenham Borough Council. [This Constitution is subject to change and the amendments are recorded in the relevant part and in the record changes sheet.](#)

1.3 PURPOSE OF THE CONSTITUTION

Cheltenham Borough Council's purpose is to provide leadership to the community and to serve those who live, work and visit Cheltenham, improving the quality of life for all members of the community.

The purpose of the Constitution is:

- (a) to enable the Council to provide clear leadership to the community in partnership with members of the public, businesses and other organisations;
- (b) to support the active involvement of members of the public in the process of local authority decision-making;
- (c) to help Councillors represent their constituents more effectively;
- (d) to enable decisions to be taken efficiently and effectively and whenever possible, in public;
- (e) to create a powerful and effective means of holding decision makers to public account;
- (f) to ensure that no one will review or scrutinise a decision in which they were directly involved;
- (g) to ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
- (h) to ensure that there is open and accountable decision making based on the principles of open government and access to information;
- (j) to provide a means of improving the delivery of services to the community; and

- (jk) to provide an up-to-date point of reference for access to all the operating rules of the Council.

1.4 Interpretation and Review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

1.45 EXECUTIVE ARRANGEMENTS LEGAL CONTEXT

The following parts of this Constitution constitute the Executive Arrangements for the purposes of the Local Government Act 2000:

- (a) Article 6 (Overview and Scrutiny Committees) and the Overview and Scrutiny Procedure Rules (Part 4.5);
- (b) Article 7 (The Cabinet) and the Cabinet Rules (Part 4.2);
- (c) Article 9 (Area Committees);
- (d) Article 10 (Joint Arrangements);
- (d) Article 13 (Decision Making) and the Access to Information Rules (Part 4.4);
- (f) Parts 3.2 to 3.8 (Responsibility for Functions).

Article 2 – Members of the Council

2.1 COMPOSITION AND ELIGIBILITY

2.1.1 Composition

The Council comprises 40 members representing 20 wards, with two Councillors representing each ward.

2.1.2 Eligibility

[Subject to the qualifications and disqualifications set out in the Local Government Act 1972](#). Only registered voters of the Borough of Cheltenham or those living or working or holding property in the Borough are eligible to hold the office of councillor.

Certain Employees of the Authority and others are prohibited from holding such office.

2.2 ELECTION AND TERM OF OFFICE

Each Councillor holds office for four years and, unless he/she is elected at a by-election, the term of office starts on the fourth day after the day of the Council elections at which they are elected and finishes on the fourth day after the Council elections four years later.

The Council holds biennial elections with half the Council (i.e. one Councillor for each ward) retiring but, subject to his/her continuing eligibility, he/she is able to seek re-election.

2.3 ROLES AND FUNCTIONS OF COUNCILLORS

2.3.1 Key roles

The key roles of Councillors are to:

- (a) serve as Leader or a Cabinet Deputy if appointed to do so by the Council;
- (b) [collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions and to](#) participate in Meetings of the Council;
- (c) serve on Overview and Scrutiny Committees if not elected onto the Cabinet;
- (f) serve on other Committees set out in Part 3 of the Constitution if appointed to do so by the Council;
- (h) participate in any area Committees;

- (i) gather the views of individuals and community groups and represent these to the Authority and other partners and organisations;
- (j) support and help groups take community responsibility;
- (k) facilitate an understanding of the role and functions of the Authority within the community;
- (l) establish and use formal and informal means for people in the community to resolve problems;
- (m) represent the Authority on outside bodies, if so appointed;
- (n) formulate and develop policies in group meetings, short life working parties, forums, et cetera.
- (o) Contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision making;
- (p) Effectively represent the interests of their ward and of individual constituents and respond to constituents' enquiries fairly and impartially;
- (q) Maintain the highest standards of conduct and ethics;

2.3.2 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 any Confidential or Exempt Information without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Employee entitled to know it.
- (c) For these purposes, "confidential" and "exempt" information are defined in the Access to Information Rules found at Part 4.4 of the Constitution.

2.4 CONDUCT

Councillors must shall at all times observe the General Principles Governing the Conduct of Members, the Code of Members' Conduct, the Protocol on Member/Employee Relations, the Protocol on Gifts and Hospitality, the Probity in Planning Protocol, all as set out in Part 5 of this Constitution, and such other codes or protocols as the Council may from time to time adopt.

2.5 ALLOWANCES

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

2.6 NOTICE OF MEETINGS

When the Proper Officer is giving notice to the public of the time and place of any Meeting in accordance with the Access to Information Rules, he/she shall as soon as practicable send a summons to the Meeting to every Member entitled to receive it and to the relevant substitute Members appointed by the Council. The summons will give the date, time and place of the Meeting and specify the business to be transacted and will be accompanied by such reports as are available.

Papers for meetings will be sent to Members at the address or the last address of which the Member has given notice in writing to the Proper Officer.

The Access to Information Rules deal with other Members' entitlement to receive papers for Meetings.

2.7 INFORMATION TO MEMBERS

It shall normally be sufficient for the purposes of keeping Members informed as to the business of the Authority, or on related matters, if the information is circulated to Members in the normal course of post or delivery or by e-mail.

2.8 ACCESS TO WORKS AND PREMISES

Unless specifically authorised to do so by the Council, the Cabinet or a Committee, a Member may not issue any order respecting any works which are being carried out by or on behalf of the Authority or claim by virtue of his/her membership of the Council any right to inspect or enter upon lands or premises or works which the Authority, or an employee duly authorised for the purpose, has the power or duty to inspect or enter.

Article 3 – Members of the Public and the Council

3.1 RIGHTS OF MEMBERS OF THE PUBLIC

Members of the public have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4.4 of this Constitution:

3.1.1 Voting

Members of the public on the electoral roll for the Borough have the right to vote and sign a petition to request a referendum for an elected Mayor form of Constitution.

No more than one referendum can, however, be held in any five year period and Cheltenham [last](#) held a referendum on the 28th June 2001.

3.1.2 Information

Members of the public have the right, except in relation to Confidential or Exempt Information or, where such information is under discussion and therefore discussed in private:

- (a) to attend meetings of the Council and its committees;
- (b) to attend meetings of the Cabinet when Key Decisions are being considered;
- (c) to attend meetings of any area Committees;
- (d) to find out from the Forward Plan what Key Decisions will be taken by the Cabinet and when;
- (e) to see [agendas](#), reports and background papers and the minutes and other records of decisions made by the Council, the Cabinet and all [other](#) Committees and Sub-committees [except where the law permits or requires the withholding of such information](#);
- (f) to inspect the Authority's accounts and make their views known to the external auditor;
- (g) to disclosure of information under the Freedom of Information Act 2000, subject to certain exemptions and exceptions.

3.1.3 Petition

Members of the public may petition the Council or the Cabinet about any matter which causes concern to them and affects the Borough.

Any person registered as a local government elector for the Borough may in presenting a petition speak about it for no more than five minutes, provided he/she has delivered a written statement about the petition to the [Managing](#)

~~Director Proper Officer~~ no later than three Working Days before the meeting and the petition relates to a policy matter and is signed by at least ten local government electors for the Borough. If the ~~Managing Director Proper Officer~~ considers the petition does not fall within the responsibilities of the Council, or deals solely with business that relates to Confidential or Exempt Information or is otherwise inappropriate, he/she will determine that the petition shall not be presented and notify the petitioner accordingly.

Whenever the Council receives a petition, the Mayor and, whenever the Cabinet receives a petition, the Leader shall determine to whom the petition is to be passed and that person or body shall ensure that a detailed response is sent to the organiser or presenter of the petition or, if such person cannot easily be identified, the first signatory.

3.1.4 Participation

Subject to the relevant rules of procedure set out in Part 4 of the Constitution Members of the public may ask questions at Council Meetings, Cabinet Meetings and Committee Meetings and, when invited, to assist investigations by Overview and Scrutiny Committees. The public may, in certain circumstances and in accordance with the rules of procedure in Part 4 also participate at the Planning Committee.

3.1.5 Complaints

Members of the public have the right to complain to:

- (a) the Authority itself under its complaints scheme;
- (b) the Local Ombudsman, normally after first using the Authority's own complaints scheme;
- (c) the Standards Board for England about an alleged breach of the Members' Code of Conduct.
- (d) the Information Commissioner about the Council's handling of a Freedom of Information Act Request.

3.2 RESPONSIBILITIES OF MEMBER OF THE PUBLIC

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

Members of the public must not create a disturbance when attending any Meeting.

Article 4 – The **FULL** Council

4.1 **Meanings**

(a) Policy Framework. The policy framework means the following plans and strategies:-

- o Best Value Performance Plan;
- o Community Strategy;
- o Crime and Disorder Reduction Strategy;
- o Plans and strategies which together comprise the Development Plan/Local Development Framework;
- o Local Transport Plan;
- o Treasury Management Plan;
- o Such other plans and strategies as the Council may from time to time resolve shall form part of the Policy Framework.

(b) Budget. The Budget includes, in so far as Full Council may approve for this purpose, the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

(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

4.2 **FUNCTIONS OF THE FULL COUNCIL**

Only the Council or, where lawful, a Committee with delegated powers, will exercise the following functions: (as set out in Part 3.2 of this Constitution):-

(a) Adopting and changing the Constitution;

(b)- approving or adopting or making changes to the Policy Framework and the Budget;

(c) subject to the urgency procedure contained in the Access to Information Rules in Part 4.4 of this Constitution, make decisions about any matter in the discharge of a Cabinet 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, or not wholly in accordance with, the Budget.

(d) Electing the Mayor and appointing the Deputy Mayor;

(e) Electing and removing the Leader of the Council (subject to procedure rules)

- (f) agreeing and/or amending the terms of reference for ~~joint~~ committees and deciding on their composition and making appointments to them;
- (g) appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council (see para 4.5 below);
- (h) adopting an allowances scheme under Article 2.5 [see Part 6 – 'Members' Allowances];
- (i) changing the name of the Borough, conferring the freedom of the Borough or appointing honorary aldermen;
- (j) confirming the ~~dismissal or appointment or dismissal of the Head of Paid service, the Managing Director, the Group Directors, the Monitoring Officer and the S.151 Officer. (see Part 4.6 Employment Rules r.4 & 5);~~
- (k) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (l) all local choice functions set out in Part 3 of this Constitution, ('Responsibility for Functions'), which the Council decides should be undertaken by itself rather than the Cabinet; and
- (m) all other matters which, by law, must be reserved to Full Council itself.

4.32 COUNCIL MEETINGS

There are four types of Council Meeting of the Full Council:

- (a) the Annual Meeting;
- (b) the Selection Meeting;
- (c) Ordinary Meetings, one of which is the budget setting Meeting; and
- (d) Extraordinary Meetings;

and they will be conducted in accordance with the Procedure Rules in Part 4.1 of this Constitution.

4.3 RESPONSIBILITY FOR FUNCTIONS

The Council has resolved upon the allocation of functions as set out in the tables in Part 3 of this Constitution setting out responsibility for the Council's functions which are to be the responsibility of the Cabinet or which are shared with the Cabinet.

The Council will maintain and regularly update Part 3 of this Constitution setting out the responsibilities for the Council's and, where this is not the responsibility of the Cabinet, the Cabinet's functions.

4.4 STATE OF CHELTENHAM DEBATE

The Leader may, and shall if the Council so resolves, call a State of Cheltenham debate on such date and in such form as shall be agreed with the Mayor.

The form of the debate shall be such as to enable the widest possible public involvement and publicity. This may include holding workshops and other events prior to or during the State of Cheltenham debate.

The debate will be chaired by the Mayor.

The results of the debate will be:

- (a) disseminated as widely as possible within the community and to agencies and organisations in the area; and
- (b) where appropriate, considered by the Leader in proposing the Budget and Policy Framework to the Council for the coming year.

4.5 APPOINTMENTS

The Council will from time to time decide to which bodies (including any bodies set up under Joint Arrangements) appointments will be made:

- (a) by the Council or one of its Committees; and
- (b) by the Cabinet.

The Council may nominate representatives to outside bodies at any time, except where such appointments are to be made by the Cabinet, although nominations will normally be made towards the beginning of each Municipal Year following an ordinary election of Councillors.

In making such nominations the Council shall have regard to such criteria as it deems appropriate to guide its appointments including, where appropriate, the giving of preference to a Councillor nominee over a non-Councillor nominee.

A person nominated to represent the Council on an outside body will continue to do so until either:

- (a) he/she resigns;
- (b) his/her specific term of office expires;
- (c) in the case of nominations where only a Councillor may serve as nominee, he/she ceases to be a Councillor; or
- (d) a new nomination is made.

Article 5 – The Mayor

5.1 ELECTION OF MAYOR AND APPOINTMENT OF DEPUTY MAYOR

The Full Council will elect the Mayor and appoint the Deputy Mayor at the Annual Council Meeting and at other times if either office falls vacant.

5.42 ROLE AND FUNCTION OF THE MAYOR

~~The Council will elect the Mayor and appoint the Deputy Mayor annually at the Annual Council Meeting and at other times if the office falls vacant.~~

The Mayor, and in his/her absence the Deputy Mayor, ~~shall have~~ has the following responsibilities:

- (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 Councillors who are not on the Cabinet are able to hold the Cabinet to account;
- (d) to chair the “state of Cheltenham debate”;
- (e) to promote public involvement in the Authority’s activities;
- (f) to ensure that matters of conscience (where appropriate in his/her opinion) are brought to the attention of the Council; and
- (g) to represent the Authority on such civic and ceremonial functions and on such other occasions as the Council and he/she determines are appropriate.

5.2 SELECTION OF MAYOR

In order to assist the Council in the exercise of its statutory duty to elect a Mayor, the ~~Managing Director~~ ~~Proper Officer~~ will maintain a list of all Members, to be known as the “Order of Precedence”, showing:

- (a) their total service to the Authority if they have not previously served the Borough as its Mayor; and
- (b) their period of service on the Authority since they last served the Borough as its Mayor

and will submit that list to the Council at its first meeting in the calendar year for Members’ information.

Article 6 – Overview and Scrutiny Committees

6.1 TERMS OF REFERENCE

The Council will appoint the Overview and Scrutiny Committees, reflecting the political balance of the Council, as set out below to discharge the functions conferred by Section 21 of the Local Government Act 2000, in relation to the matters set out in the broad areas shown in Part 3.3 of this Constitution.

<u>O&S Committees</u>	<u>Membership</u>
<u>Economy & Business Improvement</u>	<u>10 Members plus up to 3 non-voting co-optees (see Part 4.3 Rule 3 page 4.3/1)</u>
<u>Environment</u>	<u>9 Members plus up to 3 non-voting co-optees (see Part 4.3 Rule 3 page 4.3/1)</u>
<u>Social & Community</u>	<u>9 Members plus up to 3 non-voting co-optees (see Part 4.3 Rule 3 page 4.3/1) and an additional non-voting housing tenant co-opted member</u>

6.2 GENERAL ROLE

The general role of the Overview and Scrutiny Committees is to deliver measurable outcomes which benefit the effectiveness of the Authority and the community.

Within their terms of reference, Overview and Scrutiny committees 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 the Full Council and/or the Cabinet and/or any joint or area committee in connection with the discharge of any functions;
- (c) consider any matter affecting the Borough or its inhabitants; and
- (d) exercise the right to call-in decisions, for reconsideration, which have been made by the Cabinet and/or any Joint or area committees but not yet implemented.

6.3 SPECIFIC FUNCTIONS

(a) Policy development and review

Overview and Scrutiny Committees may:

- (a*i*) assist the Full Council and the Cabinet in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
- (b*ii*) conduct research, community and other consultation in the analysis of policy issues and possible options;
- (c*iii*) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (d*iv*) question members of the Cabinet and Employees about their views on issues and proposals affecting their areas of responsibility;
- (e*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;
- (f*vi*) respond to the Full Council and the Cabinet on any matter upon which their opinion is sought; and
- (g*vii*) consider any matter within their terms of reference which is included on the agenda following a request in writing by a member of the relevant Committee to the Managing Director ~~Proper Officer~~ for such consideration.

(b) Scrutiny

Overview and Scrutiny Committees may:

- (a*i*) review and scrutinise the decisions made by and the performance of the Cabinet and Employees both in relation to individual decisions and over time;
- (b*ii*) review and scrutinise the performance of the Authority in relation to its policy objectives, performance targets and/or particular service areas;
- (c*iii*) question members of the Cabinet and Employees about their decisions and achievements, whether generally, in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (d*iv*) make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process;
- (e*v*) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Overview and Scrutiny Committee and local people about their activities and performance; and
- (f*vi*) question and gather evidence from any person (with their consent).

(c) Finance

Overview and Scrutiny Committees may exercise overall responsibility for the finances made available to them.

(d) Annual report

Overview and Scrutiny Committees must report annually to Full Council on their work programme and performance and make recommendations for future work programmes and amended working methods, if appropriate.

6.4 PROCEEDINGS OF OVERVIEW AND SCRUTINY COMMITTEES

Overview and Scrutiny Committees will conduct their proceedings in accordance with the Procedure Rules and the Overview and Scrutiny Rules set out in Part 4.3 of this Constitution.

6.5 MEMBERSHIP OF OVERVIEW AND SCRUTINY COMMITTEES

Cabinet Deputies may not be members of an Overview and Scrutiny Committee.

Article 7 – The Cabinet

7.1 ROLE

The Cabinet will carry out all of the Authority's functions which are not, whether by law or under this Constitution, the responsibility of either the Council or some other body. [\(see Part 3 Executive Responsibility for Functions\).](#)

7.2 FORM AND COMPOSITION

The Cabinet will consist of the Leader together with at least three, but not more than seven, Councillors appointed to the Cabinet by the [Leader of the Council](#).

7.3 LEADER

The Leader will be the Councillor elected to that position by the Council. [The Leader will hold office until:- ~~under 7.2 above~~.](#)

- (a) he/she resigns from the office; or
- (b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or
- (c) he/she is no longer a Councillor; or
- [\(d\) the next Selection Meeting; or](#)
- [\(de\) a new Leader is appointed by the Council. he/she is removed from office by resolution of the Full Council provided that notice of any motion which would have the effect of removing him/her from office is delivered in writing to the Managing Director 10 clear days before the relevant Council meeting signed by at least 10 Members.](#)

7.4 OTHER EXECUTIVE MEMBERS (DEPUTIES)

Only councillors may be appointed to the Cabinet. There may be no co-optees nor substitutes for Deputies. Neither the Mayor nor Deputy Mayor may be appointed to the Cabinet and Deputies (including the Leader) may not be members of an Overview and Scrutiny committee.

Deputies shall hold office until:

- (a) they resign from office; or
- (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); or

(c) they are no longer Councillors; or

(d) the Selection Meeting following their appointment; or

(ed) they are removed from office by the Leader who must give written notice of any removal to the Managing Director, (such removal to have immediate effect), and may then ~~nominate~~ appoint a replacement ~~for appointment approval by Council; or.~~

7.5 **SUSPENSION OF A DEPUTY FROM OFFICE**

~~The Leader may suspend a Deputy from office until the next appropriate meeting of the Council by giving notice in writing of such suspension to the Deputy concerned and to the Proper Officer.~~

7.6 **CASUAL VACANCIES ON THE CABINET**

~~A casual vacancy on the Cabinet may be filled by the Council at any time on the nomination of the Leader.~~

7.7 **PERIOD OF OFFICE**

~~The Cabinet continues to have responsibility for Executive Functions until a new Cabinet is appointed by the Council.~~

7.8 **PROCEEDINGS OF THE CABINET**

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4.2 of this Constitution.

7.9 **RESPONSIBILITY FOR FUNCTIONS**

The Leader will maintain in Part 3 of this Constitution details setting out which Deputies, committees of the Cabinet, Employees, Area Committees or Joint Arrangements are responsible for the exercise of particular Cabinet functions.

Article 8 – Regulatory and Other Committees

8.1 Regulatory and other committees

The Council will appoint the committees set out in the table below to discharge the functions set out in Part 3 of this Constitution ('Responsibility for Functions' – Part 3 'Scheme of Delegation to Other Committees').

<u>Committee</u>	<u>Reference for Scheme of Delegation</u>
<u>The planning Committee</u>	
<u>The Licensing Committee</u>	
<u>The Staff and Support Services Committee</u>	

Article 89 – The Standards Committee

89.1 STANDARDS COMMITTEE

The Full Council will establish a Standards Committee with the role and functions set out in Part 3.4 of this Constitution.

89.2 COMPOSITION

89.2.1 Membership

The Standards Committee will be appointed by the Full Council and be composed of:

- three Councillors drawn from more than one political party (but not the Leader);
- four persons who are not a Member or an officer of the Council or ~~a member of~~ any other body having a standards committee ~~and who are eligible for membership~~ (who will be referred to as the "Independent Members");
- one member of a parish council in the Council's area who is not also a Cheltenham Borough Councillor (who will be referred to as the "Parish Member").

(N.B other than in respect of the Parish Member substitutes may not be appointed.)

89.2.2 Terms of office of Independent and Parish Members

Independent Members and the Parish Member shall be appointed in accordance with the prescribed procedure to serve on the Committee for a period of four years and, subject to their continuing eligibility, they may re-apply for membership thereafter.

89.2.3 Parish Member

The Parish Member (or his/her authorised deputy) must be present when matters relating to parish councils or their members are being considered;

89.2.4 Chairing the Committee

The Chairman must be an independent member and will be elected at the first meeting of the Committee in each Municipal Year.

89.2.5 Voting rights

All members of the Committee are entitled to vote at meetings.

89.3 DECISION MAKING

Whenever the Standards Committee is required to give a decision under this Constitution or otherwise, the Monitoring Officer may send a report on the matter with his/her recommendations to each Member and, if none of the Members disagree within five working days, the Monitoring Officer is delegated the power to make the decision on behalf of the Standards Committee in accordance with the agreed recommendation.

9.4 Role and Function

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors and co-opted members of the Council to undertake the general functions of a standards committee as set out in the Local Government Act 2000, namely:
- (b) assisting the councillors and co-opted members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of its codes of Conduct;
- (d) monitoring the operation of the Council's codes of Conduct;
- (e) advising, training or arranging to train councillors and co-opted members on matters relating to its codes of Conduct;
- (f) granting dispensations to councillors and co-opted members from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an Ethical Standards Officer approved by the National Standards Board for England to the Monitoring Officer;
- (h) to formulate and recommend to the Council local protocols governing the council's internal and external conduct, including the whistle-blowing policy;
- (i) insofar as it relates to the committee's terms of reference, to have a general oversight of the Council's Constitution and its rules;
- (j) to give advice and guidance to Members on Members' interests and the receipt and recording of gifts and hospitality;
- (k) to grant dispensations to Councillors and co-opted members, in accordance with the relevant regulations, from requirements relating to interests set out in the Council's member code of conduct;

- (l) to consider and determine allegations of breaches of the Council's member code of conduct referred to it by the Standards Board or not otherwise dealt with by the Standards Board and to determine such sanction as it considers appropriate following a finding of misconduct or to recommend the Council to impose a sanction;
- (m) to consider, determine and apply such sanctions as are available to it in relation to any breach of code or protocol of the council which is not also a breach of the Code of Members' Conduct;
- (n) to receive and act on reports from:
 - (i) case tribunals of the Adjudication Panel
 - (ii) Ethical Standards Officers
 - (iii) the Monitoring Officer
- (o) to have oversight of complaints handling and Ombudsman investigations;
- (p) to liaise with external agencies, in particular the Local Government Ombudsman and the District Auditor, in connection with any matter within the Committee's terms of reference;
- (q) the exercise of the above in relation to the parish councils in Cheltenham and the members of those parish councils;
- (r) to determine, where it is unclear, which officer posts are subject to political restrictions under Section 2 of the local Government and Housing Act 1989.

Article 109 - Area Committees

109.1 AREA COMMITTEES

The Council may, if it so determines, appoint area Committees as it sees fit. Details of the area Committees that it appoints and their terms of reference shall be set out in Part 3 of this Constitution.

910.2 MEMBERSHIP OF AREA COMMITTEES

An area Committee shall comprise all Borough and County Councillors for the area served by the Committee.

In addition to the County Councillors, an area Committee may co-opt up to six non-voting members onto the Committee being representatives of appropriate organisations active within the area served by the Committee.

The Council can agree to the appointment of additional co-opted members if so requested by an area Committee.

All Members of an area Committee, including co-opted members, are bound by the Council's Code of Conduct and other relevant protocols.

910.3 CHAIRMEN OF AREA COMMITTEES

The Chairmen of area Committees will be appointed at the first Meeting following the Annual Meeting of the Council, by the Borough Councillors for the wards served by that Committee from amongst their own number.

910.4 CONFLICTS OF INTEREST – MEMBERSHIP OF AREA AND OVERVIEW AND SCRUTINY COMMITTEES

(a) Conflict of interest

If an Overview and Scrutiny Committee is scrutinising specific decisions or proposals in relation to the business of the area Committee of which a Councillor is a member, the Councillor may not speak or vote at the Overview and Scrutiny Committee meeting unless a dispensation to do so has been given by the Standards Committee.

(b) General policy reviews

Where the Overview and Scrutiny Committee is reviewing policy generally touching on the business of an area Committee of which a Councillor is a Member, the Councillor must declare his/her interest before the relevant agenda item is reached, but he/she may speak and vote unless he/she has an interest greater than that of a member of the public.

910.5 AREA COMMITTEES – ACCESS TO INFORMATION

Area Committees will comply with the Access to Information Rules in Part 4.4 of this Constitution.

Agendas and notices for area Committee Meetings which deal with both functions of the Cabinet and functions which are not the responsibility of the Cabinet will state clearly which items are which.

| 910.6 **DEPUTIES ON AREA COMMITTEES**

A Deputy may serve on an area Committee if otherwise eligible to do so as a Councillor but cannot be the Chairman.

Article 10 – Other Committees and Appointments

10.1 – OTHER COMMITTEES

~~The Council will at the Selection Council Meeting and on such other occasions as it considers it necessary, appoint such other Committees of the Council as it determines and shall agree the size of their membership and terms of reference, which cannot include functions allocated to the Cabinet.~~

~~The size and terms of reference of such Committees shall be set out in Part 3.5 of this Constitution.~~

10.2 APPOINTMENTS

~~The Council will from time to time decide to which bodies (including any bodies set up under Joint Arrangements) appointments will be made:~~

- ~~(a) — by the Council or one of its Committees; and~~
- ~~(b) — by the Cabinet.~~

~~The Council may nominate representatives to outside bodies at any time, except where such appointments are to be made by the Cabinet, although nominations will normally be made towards the beginning of each Municipal Year following an ordinary election of Councillors.~~

~~In making such nominations the Council shall have regard to such criteria as it deems appropriate to guide its appointments including, where appropriate, the giving of preference to a Councillor nominee over a non-Councillor nominee.~~

~~A person nominated to represent the Council on an outside body will continue to do so until either:~~

- ~~(a) — he/she resigns;~~
- ~~(b) — his/her specific term of office expires;~~
- ~~(c) — in the case of nominations where only a Councillor may serve as nominee, he/she ceases to be a Councillor; or~~
- ~~(d) — a new nomination is made.~~

Article 11 – Joint Arrangements

11.1 ARRANGEMENTS TO PROMOTE WELL-BEING

The Council or the Cabinet, 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.

11.2 JOINT ARRANGEMENTS

- (a) The Council may establish joint arrangements with one or more local authorities and/or their executives 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 a Joint Committee with these other local authorities.
- (b) The Cabinet 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 Cabinet may only appoint Deputies to a joint committee and those Members need not reflect the political composition of the Authority.
- (d) The Cabinet may appoint Members to a Joint Committee from outside the Cabinet 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 Cabinet may appoint to the Joint Committee any Councillor representing a ward which is wholly or partly contained within the area concerned.

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 3.6 of this Constitution.

11.3 ACCESS TO INFORMATION

- (a) The Access to Information Rules in Part 4.4 of this Constitution apply to a Joint Committee.

- (b) 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 Cabinet.
- (c) If the Joint Committee contains Members who are not on the executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

11.4 **DELEGATION TO AND FROM OTHER LOCAL AUTHORITIES**

- (a) The Council may delegate non-Executive Functions to another local authority or, in certain circumstances, to the executive of another local authority.
- (b) The Cabinet may delegate Executive Functions to another local authority or to the Executive of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority is reserved to the Council.

11.5 **CONTRACTING OUT**

The Council, for functions which are not Executive Functions, and the Cabinet for Executive Functions, may contract out to another body or organisation functions which may be exercised by an Employee and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994 or under contracting arrangements where the contractor acts as the Council's agent under usual agency principles, provided there is no delegation of the Council's discretionary decision making.

Article 12 – Employees

12.1 MANAGEMENT STRUCTURE

(a) General

The Council may engage such Employees as it considers necessary to carry out its functions.

(b) Head of Paid Service, Monitoring Officer and Section 151 Officer

The Council has designated the following statutory posts as shown:

Designation	Person appointed
Head of Paid Service	Managing Director
Monitoring Officer	Assistant Director (Legal Services and Monitoring Officer)
Deputy Monitoring Officer	Head of Legal Services
Section 151 Officer	Group Director, Economy and Business Improvement

Such posts will have the functions described in Article 12.2–12.4 below.

(c) Structure

The Head of Paid Service will prepare 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 this Constitution.

[\(d\) Delegation](#)

[The functions delegated to employees will be as set out in Part 3 of this Constitution \(Responsibility for Functions\).](#)

12.2 FUNCTIONS OF THE HEAD OF PAID SERVICE

12.2.1 Discharge of functions by the Council

The Head of Paid Service will 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 required for the discharge of functions and the organisation of officers.

12.2.2 Restrictions on functions

The Head of Paid Service may not be the Monitoring Officer.

12.3 FUNCTIONS OF THE MONITORING OFFICER

12.3.1 Maintaining the Constitution

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Councillors, Employees and the public.

12.3.2 Updating the Constitution

The Monitoring Officer will, as necessary, advise the Council on amendments to the Constitution normally through the Committee which has the role of making recommendations to the Council on it. He/she may make such amendments to the Constitution as are necessary to take account of any decisions of the Council or the Cabinet and changes of law or fact, and shall notify Councillors, the Head of Paid Service and such other Employees as he/she considers appropriate of any such changes.

12.3.3 Ensuring lawfulness and fairness of decision making

After consulting with the Head of Paid Service and the Section 151 Officer, the Monitoring Officer will report to the Council (or to the Cabinet in relation to an Executive Function) if he/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 proposal or decision being implemented until the report has been considered.

12.3.4 Supporting the Standards Committee

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

12.3.5 Receiving reports

The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.

12.3.6 Conducting investigations

The Monitoring Officer will conduct investigations into matters referred by ethical standards officers, or arrange for such investigations to be made, and make reports or recommendations in respect of them to the Standards Committee.

12.3.7 Ensuring access to information

The Monitoring Officer will ensure that Executive Decisions, together with the reasons for those decisions and relevant professional reports and background papers are made publicly available as soon as possible.

12.3.8 Advising whether Executive Decisions are within the Budget and Policy Framework.

The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.

12.3.9 Call-in

The Monitoring Officer will determine if a call-in request falls within Article 13.

12.3.10 Providing advice

The Monitoring Officer will provide advice to all Councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues.

12.3.11 Restrictions on posts

The Monitoring Officer cannot be the Head of Paid Service nor the Section 151 Officer.

12.4 FUNCTIONS OF THE SECTION 151 OFFICER

12.4.1 Ensuring lawfulness and financial prudence of decision making

After consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the Council, or to the Cabinet in relation to an Executive Function, 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.

12.4.2 Administration of financial affairs

The Section 151 Officer will have responsibility for the administration of the financial affairs of the Council and will ensure that an adequate and effective internal audit system is maintained.

12.4.3 Contributing to corporate management

The Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

12.4.4 Providing advice

The Section 151 Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Councillors and will support and advise Councillors and Employees in their respective roles.

12.4.5 Give financial information

The Section 151 Officer will provide financial information to the media, members of the public and the community.

12.5 **DUTY TO PROVIDE SUFFICIENT RESOURCES TO THE MONITORING OFFICER AND THE SECTION 151 OFFICER**

The Council will provide the Monitoring Officer and Section 151 Officer with such officers, accommodation and other resources as are in their respective opinions sufficient to allow their duties to be performed.

12.6 **CONDUCT**

Employees will comply with the Protocol on Member/Employee relations set out in Part 5 of this Constitution and with the Employees Code of Conduct set out in Part 7.

12.7 **EMPLOYMENT**

The recruitment, selection and dismissal of officers will comply with the Employment Rules out in Part 4.6 of this Constitution.

Article 13 – Decision Making

13.1 RESPONSIBILITY FOR DECISION MAKING

The Authority will issue and keep up-to-date a record of what the respective responsibilities of the Council and its Committees, the Cabinet, Cabinet Deputies and of Officers for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

13.2 PRINCIPLES OF DECISION MAKING

All decisions of the Council, the Cabinet and officers will be made in accordance with the following principles:

- (a) the action must be lawful and in accordance with all appropriate statutory and regulatory requirements and this Constitution, including the Financial Rules;
- (b) the action must be proportionate to the desired outcome;
- (c) decisions should be taken following due consultation and on the taking of professional advice from officers;
- (d) respect for human rights;
- (e) a presumption in favour of openness;
- (f) clarity of aims and desired outcomes;
- (g) due consideration of all objections; and
- (h) explaining what options were considered and giving the reasons for the decision.

13.3 ~~13.3~~ TYPES OF DECISION

(a) Decisions reserved to Full Council

Decisions relating to the functions listed in Article 4.02 (Functions of the Full Council) which will be taken by the Full Council and not delegated.

(b) Key Decisions

A key decision means an executive decision which is likely:-

- (i) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or

- (ii) to be significant in terms of its effects on communities living or working in an area comprising **two or more wards** in the district

To assist officers in assessing whether a decision is a 'Key Decision' the following guidance is issued by Cheltenham Borough Council:-

A 'Key decision' is:-

- any Executive decision which requires a budget expenditure or saving of £100,000 or more;
- any Executive decision relating to the acquisition or disposal of land or an interest in land with a value in excess of £100,000;
- any Executive decision which has borough wide significance or one on which members of the Cheltenham Community would reasonably expect to be notified or consulted.

Additionally, in accordance with Section 38 of the Local Govt. Act 2000, in determining the meaning of "**Significant**" for these purposes regard shall be had to any guidance issued by the Secretary of State.

13.4 **DECISION MAKING BY THE COUNCIL**

Subject to Article 13.7, the Council meeting will follow the Procedure Rules set out in Part 4.1 of this Constitution when considering any matter.

13.54 **DECISION MAKING BY THE CABINET**

Subject to Article 13.7, the Cabinet and any Committee of the Cabinet will follow the Cabinet Rules set out in Part 4.2 of this Constitution when considering any matter.

13.5 **DECISION MAKING BY OVERVIEW AND SCRUTINY COMMITTEES**

Overview and Scrutiny Committees will follow the Overview and Scrutiny Rules set out in Part 4.3 of this Constitution when considering any matter.

13.6 **DECISION MAKING BY OTHER COMMITTEES AND SUB-COMMITTEES ESTABLISHED BY THE COUNCIL**

Subject to Article 13.7, all Committees and Sub-Committees established by the Council will follow those parts of the Procedure Rules set out in Part 4.1 of this Constitution as apply to them when considering any matter.

13.7 **DECISION MAKING BY COUNCIL BODIES ACTING AS TRIBUNALS**

The Council, the Cabinet, a Committee or an officer acting as a tribunal or in a quasi judicial manner or as a Regulatory Committee or determining and/or 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 hearing contained in Article 6 of the European Convention on Human Rights.

Article 14 – Finance, Contracts and Legal Matters

14.1 FINANCIAL MANAGEMENT

The management of the Authority's financial affairs will be conducted in accordance with the Financial Rules set out in Part 4.7 of this Constitution.

14.2 CONTRACTS

Every contract made by the Authority will comply with the Contract Rules set out in Part 4.8 of this Constitution.

14.3 LEGAL PROCEEDINGS

The Monitoring Officer and the Head of Legal Services is each authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Authority or in any case where the Monitoring Officer or Head of Legal Services considers that such action is necessary to protect the Council's interests and he/she is satisfied as to the available evidence. [In cases of conflicting opinion the Monitoring Officer's view shall prevail.](#)

14.4 AUTHENTICATION OF DOCUMENTS

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Managing Director or the Monitoring Officer or the Head of Legal Services or any other person authorised by them, 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 Rules, \(Part 4.8 of the Constitution\), concerning process and form of required documentation, in particular all contracts must be evidenced in writing.](#)

14.5 COMMON SEAL OF THE AUTHORITY

The common seal of the Authority will be kept in a safe place in the custody of the Monitoring Officer.

A decision of the Authority, or the Cabinet, a Committee, Sub-Committee or Employee able or authorised to act on its behalf, will be sufficient approval 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 Monitoring Officer or the Head of Legal Services should be sealed.

The affixing of the common seal must be attested by either the Mayor, Deputy Mayor, the Managing Director, the Monitoring Officer or the Head of Legal Services.

Article 15 – Review and Revision of the Constitution

15.1 DUTY TO MONITOR AND REVIEW THE CONSTITUTION

The 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.

15.2 PROTOCOL FOR MONITORING AND REVIEW OF CONSTITUTION BY MONITORING OFFICER

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1.

In undertaking this task the Monitoring Officer may amongst other actions:

- (a) observe meetings of different parts of the Member and Employee structure;
- (b) undertake an audit of a sample of decisions;
- (c) record and analyse issues raised with him/her by Members, Employees, 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.

15.2 CHANGES TO THE CONSTITUTION

Changes to Parts 1 to 5 of the Constitution will, insofar as they are a matter for the [Full](#) Council to decide, only be approved by the [Full](#) Council after consideration of either a report from the Monitoring Officer or the Monitoring Officer has been given the opportunity of making such a report and has declined to do so, in which case that fact shall be recorded in the minutes of the Meeting at which the decision to amend the Constitution was taken: provided that nothing in this paragraph shall prevent a Committee delegating any of its functions to a Sub-Committee or an Employee.

Article 16 - Construction, Publication and Suspension of the Constitution

16.1 CONSTRUCTION

The ruling of the Mayor as to the construction or application of the Constitution, or as to any proceedings of the Council, shall not be challenged at any Meeting of the Council. The Mayor must be guided in his/her interpretation by the purposes of the Constitution set out in Article 1 and by the Monitoring Officer.

16.2 PUBLICATION

- (a) The Monitoring Officer will give a printed copy of this Constitution to each Councillor upon delivery to him/her of his/her declaration of acceptance of office on the Councillor being elected to the Council.
- (b) The Monitoring Officer will ensure that copies are available for inspection at council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The Monitoring Officer will ensure that the summary of the Constitution is made widely available within the area and is updated as necessary.

16.3 SUSPENSION OF THE CONSTITUTION

16.3.1 Limit to suspension

The Articles of this Constitution may not be suspended other than Article 12 (Employees) to the extent that may be necessary for the purposes of making temporary arrangements in relation to the duties and functions of Employees.

[16.3.2 Rules Capable of Suspension](#)

The rules contained in Part 4 (save for the exceptions listed below) may be suspended by the Council but only to the extent permitted by law and after the advice of the Monitoring Officer has been obtained. The exceptions are:

- | | | |
|-----|---------------------|---|
| (a) | Procedure Rule A8 | Notices of Motions |
| (b) | Procedure Rule C8.6 | Members' entitlement to have their votes recorded |
| (c) | Procedure Rule C12 | Prevention of Disorderly Conduct |
| (d) | Part 4.6 | Employment Rules |
| (e) | Part 4.7 | Financial Rules |

16.3.32 Procedure to suspend

A motion to suspend can only be made by the Council and cannot be moved without notice unless at least one half of the whole number of Members

entitled to be present are present. The extent and duration of suspension must be proportionate to the result to be achieved, taking account of the purposes of the Constitution as set out in Article 1 and shall only be for so long as is necessary to transact the particular item of business necessitating the suspension.

Article 17 - Interpretation

17.1 DEFINITIONS

The Interpretation Act 1978 shall apply to the interpretation of this Constitution as it applies to the interpretation of an Act of Parliament.

In this Constitution, unless the context otherwise admits, the following terms have the meaning assigned to them:

"Access to Information Rules" means the rules set out in Part 4.4 of this Constitution;

"Appropriate" in relation to a Committee shall mean the Committee or Sub-Committee to which has been delegated responsibility for the function of the Council to which a particular matter, proposal or Contract relates and includes an Overview and Scrutiny Committee;

"Article" means an Article in Part 2 of this Constitution;

"the Authority" means Cheltenham Borough Council;

"the Board" means the Authority's Board of Directors comprising the Managing Director and the Group Directors acting by a majority of those present;

"Budget" means either, as the context requires:

- (a) the financial resources allocated to a particular year; or
- (b) the process whereby that allocation is made to different services and projects, including proposed contingency funds, the council tax base, setting the council tax and decisions relating to the controls of the Authority's borrowing requirement, the control of capital expenditure and the setting of the Virement limits;

"Budget and Policy Framework Rule" means a rule set out in Part 4.5 of this Constitution;

"Cabinet" means the executive for the purposes of Section 11(3) of the Local Government Act 2000 and includes the Leader of the Council and the Members appointed by the Council to the Cabinet;

"Cabinet Rule" means one of the rules set out in Part 4.2 of this Constitution;

"Chairman" means the Chairman of the Appropriate Committee or in his/her absence the Vice-Chairman and Vice-Chairman and is to be construed accordingly;

"Chief Officer" means:

- (a) the Head of Paid Service;

- (b) the Monitoring Officer;
- (c) the Section 151 Officer;
- (d) a member of the Board.

Any reference to the appointment or purported appointment or dismissal of a Chief Officer includes a reference to his/her engagement or purported engagement or dismissal under a contract of employment;

"Committee" means a Committee or a Sub-Committee of the Council appointed under Section 101 of the Local Government Act 1972 or, where appropriate, Section 21 of the Local Government Act 2000 (Overview and Scrutiny Committees);

"Confidential Information" means confidential information as defined by Section 100A of the Local Government Act 1972 (reproduced in the Access to Information Rules);

"Contract" means a transaction entered into by the Authority whereby a person or body or Direct Service acting as a Contractor will for consideration undertake work, provide services or provide goods or materials, or for the disposal of goods other than Contracts for the employment of Employees; or for the acquisition or disposal of land or interest in land, but does not include the appointment of Counsel. Any reference to a Contract of a particular value shall mean a single transaction or a series of transactions which in aggregate amount to that value;

"Contractor" means any person or body or Direct Service selected by the Authority to perform a Contract;

"Council" means the members of the Authority acting collectively;

"Councillor" means an elected Member of Cheltenham Borough Council;

"Deputy" means any member of the Cabinet and may include the Leader;

"Direct Service" means any Employee or group of Employees who asks or is invited to put in a tender or quotation for the performance of a Contract;

"Disciplinary Action" means any action occasioned by alleged misconduct which, if proved, would according to the usual practice of the Authority be recorded on the Employee's personal file and includes any proposal for dismissal of an Employee for any reason other than redundancy or permanent ill-health or infirmity of mind or body, but does not include failure to renew a Contract of employment for a fixed term unless the Authority has undertaken to renew such a Contract;

"Employee" means any Employee of the Authority;

"EU" means European Union and "EU threshold" means the minimum value of a Contract above which the EU's Public Procurement Directives apply;

"Executive" means any part of the Authority when discharging the functions that are to be the responsibility of the Cabinet;

"Executive Functions" means all the functions and duties of the Authority other than those reserved to the Council or delegated by the Council to an Appropriate Committee or to an Employee;

"Exempt Information" means exempt information as defined by Section 100A of the Local Government Act 1972 (reproduced in the Access to Information Rules);

"Forward Plan" means the rolling plan which the Leader is required to prepare under the Local Authorities (Executive Arrangements) (Access to Information) (England) Rules 2000 containing details of all matter likely to be the subject of Key Decisions during a period of four months, as interpreted by Access Rule 14;

"Goods" includes materials, plant and equipment of any sort;

"Group Director" means a member of the Board and includes the Managing Director;

"Group Leader" means the leader of a Political Group as defined in the Local Government (Committees etc.) Regulations 1990 or his/her deputy or other person appointed by the Group Leader to represent him/her in relation to any matter;

"Head of Paid Service" means the person designated as such under section 4 of the Local Government and Housing Act 1989;

"Key Decision" means a decision by the Executive which is likely:

- (a) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Borough;

[\(N.B see guidance contained in Art 13\)](#)

"Land" includes any legal or equitable interest in land;

"the Leader" means the member of the Council appointed as leader of the Executive for the purposes of Section 11(3)(a) of the Local Government Act, otherwise known as the Leader of the Council or in the event of his/her inability to act, due to absence, conflict of interest or otherwise, the Deputy Leader or someone authorised in writing by the Leader;

"Majority Group" means a Political Group to which belongs either:

- (a) more than half of the members of the Council; or
- (b) exactly half of the members of the Council, including the Mayor;

"Managing Director" means the Managing Director and any Employee authorised by him/her or by the Council to act in his/her capacity in relation to this Constitution;

"Mayor" includes a reference to the Deputy Mayor where the Mayor is for any reason unable to act and, where applicable, the Person Presiding;

"Meeting" means a meeting of the Council, a Committee or a Sub-Committee or of the Cabinet or a Committee of the Cabinet, as the case may be;

"Member" means, in relation to the Council, a Councillor and, in relation to the Cabinet, a Deputy, and in relation to any Committee a Member of that Committee, whether or not entitled to vote; but shall not include any person who is a member of the Council only by virtue of Section 3(3) or Section 5(2) of the Local Government Act 1972 (Mayor and Deputy Mayor to remain members until replaces);

"Monitoring Officer" means the Employee designated under Section 5(1) of the Local Government and Housing Act 1989 and, where appropriate, any Employee authorised by him/her or by the Council to act as a Deputy Monitoring Officer;

"Month" means a calendar month;

"Municipal Year" means the period between one Annual Council Meeting and the next following Annual Council Meeting;

"Number of Members" means, in relation to the Council, the number of persons who may act at the time in question as members of the Council, and in relation to a Committee, the number of persons who may act at the time in question as voting members of that body;

"Ordinary Meeting" means, in relation to the Council, a meeting the date of which has been fixed by the Council before or at the start of the new Municipal Year under Procedure Rule A1, including any such meeting which is rearranged for a date other than that originally set;

"Overview and Scrutiny Committee" means any Committee which the Council appoints as an Overview and Scrutiny Committee for the purposes of Section 21 of the Local Government 2000 and includes a Sub-Committee;

"Person" in relation to the Contracts Rules includes a body, firm, company, corporation and, where appropriate, Direct Services;

"Person Presiding" means the Mayor or Chairman, as the case may be, or such other person entitled, or appointed, to take the chair at any meeting;

"Planning Committee" means the Committee, by whatever name known, that discharges the Council's development control functions (including the determination of applications for planning permission, listed building consent and similar permissions and consents) when acting in that capacity;

"Political Group" means a political group as defined in the Local Government (Committees etc.) Regulations 1990 as amended;

"Political Proportionality" means balanced in proportion to the strengths of the Political Groups on the Council, according to law.

"Policy Framework" means the plans and strategies set out in Part 3.1 of this Constitution;

"Proper Officer" means, for the purposes of this Constitution, the Managing Director or, in the event of his/her inability to act, whether through absence, conflict of interest or otherwise, the Monitoring Officer or someone authorised in writing by either of them;

"Procedure Rule" means a rule set out in Part 4.1 of this Constitution;

"Quotation" includes an offer;

"Regulatory Committee" means the Planning Committee and any Committee that discharges the Council's functions determine applications for licences, certificates, registrations and similar consents, when acting in that capacity;

"Sale" includes any form of disposal and vice versa;

"Section 151 Officer" means the Employee appointed by the Council for the purposes of Section 151 of the Local Government Act 1972 to administer the financial affairs of the Authority;

"Services" includes the giving of advise and the supply of professional technical assistance;

"the Standard Clauses" are set out in Contracts Rule 7;

"Sub-Committee" means a sub-committee of a Committee;

"Supervising Officer" means the relevant Group Director or any other person nominated by him/her in writing who has the responsibility for a particular Contract;

"Supply" includes provision;

"Variation" means:

- (a) the material alteration or modification of the design, quality or quantity of works, Goods or Services provided under a Contract; or
- (b) the material alteration, omission or substitution of any such works, Goods or Services.

"Without Comment" means in relation to the moving, seconding or putting of a motion, without any person speaking except to indicate the wording of the motion, the fact that it is being moved, seconded or put, or (in the case of the Person Presiding) the effect of adopting the motion;

"Working Day" means any day upon which the Municipal Offices are open to the public;

3. Unless the context otherwise requires, where provision is made in the Constitution for the calling of meetings, submitting matters for inclusion in agendas or similar procedural matters relating to meetings:

"day" means a calendar day;

"clear days" means a period of time prior to the meeting excluding the day on which public notice is given of the meeting and the day of the meeting itself.

Where there is a requirement to give a day or several days or clear days or working days notice of any kind before a meeting, the whole of the day on which the meeting is held is to be ignored.

4. Any reference in the Constitution to legislation shall be construed as a reference to any legislation that replaces or amends it.